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United States Supreme Court.

OCTOBER TERM, 1906.

No. 588.

ILLINOIS CENTRAL RAILROAD COMPANY, GULF & SHIP ISLAND RAILROAD COMPANY, SOUTHERN RAILWAY COMPANY *ET ALS.*,

APPELLANTS,

VERSUS

THE INTERSTATE COMMERCE COMMISSION.

BRIEF FOR APPELLEE.

T. M. MILLER,
Of Counsel for Appellee.

J. G. Hauser, "The Legal Printer," 620-22 Poydras St., N. O., La.

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STATEMENT OF CASE.

The nine railroad companies, defendants below, were, with the exception of the Gulf & Ship Island, on and prior to January 30, 1903, and all are now members of an association of railways known as the "Southeastern

Mississippi Valley Association," of which a Mr. M. B. Washburn was, at the date named, chairman.

It is asserted that the defendants' association differs from the Trans-Mississippi Traffic Association in that its members, while assembling, from time to time, for the purpose of discussing their common interests and interchanging views, are subject to no control, and always act independently, being under no obligation to observe or to adhere to any matter which may be favored by all.

For instance, it is said that when any member wishes to change a rate, on any commodity handled by all, such member, through its traffic manager, takes up the subject with the others, through the chairman or with other members direct, and invites, not an agreement, but an "expression of views" of the other members. Then, if the *views* of all are found to be in harmony, each being of the opinion that the proposed change is desirable and beneficial and should be made, each member, acting entirely upon its own judgment and responsibility, and in its own interest, puts the proposed change into effect—generally by means of tariffs forwarded to the Interstate Commerce Commission, through its chairman.

Thus, on January 2, 1903, the freight traffic manager of the Southern Railway, writing, from Washington, D. C., to Mr. T. J. Hudson, traffic manager of the Illinois Central, at Chicago, brought up the subject of rates on lumber from Southern points to Ohio and Mississippi crossings, observing that "the rates on lumber and pig

iron have generally been adjusted with relation to the price of the commodity," and that "the rates on lumber are still much lower than they were about twelve years ago, while we are told that the profits are quite liberal." Also, that shippers had expressed a willingness to pay higher rates if an ample supply of cars and quicker service could be maintained. He also expressed the belief that all lines east of the Mississippi River could *afford* to advance the basing rate to Cairo 2 cents per 100 pounds. This, he added, would make Cairo 16 cents and Cincinnati 22 cents, from points on and south of a line drawn from Vicksburg, Miss., through Jackson and Meridian, Miss., Selma and Montgomery, Ala., to Savannah, Ga., taking in the entire yellow pine belt tributary to "Central Freight Association" territory.

Powell letter, Vol. II, pp. 688, 689.

The subject being brought up, after several conferences, terminating at St. Louis, on January 30, 1903, all members at length expressed their views in favor of the advance, and, accordingly, their several tariffs were sent in to the Interstate Commerce Commission (the Gulf & Ship Island and the Northeastern joining, although not beneficiaries), establishing an advance of 2 cents per 100 pounds, effective March 1, 1903, on yellow pine lumber, carload lots, from all producing points to Ohio and Mississippi River crossings and beyond into "Central Freight Association Territory"—being that portion of the United States on and north of the Ohio River and

on and east of the Mississippi River, above Cairo, to a line drawn from Buffalo to Pittsburg.

This was not done, however, until an understanding was reached that the members of the Georgia and Arkansas Associations would make a simultaneous advance, and it was conceded that the advance by one set would not be practicable unless the others took similar action.

This appears from the minutes and correspondence produced by M. P. Washburn, chairman, Vol. II, pp. 688 to 810.

A storm of protests was raised against the advance, largely on account of its suddenness, and the circumstance that the producers had numerous outstanding contracts based on the existing freight rates. These protests produced a postponement of the advance until April 15, 1903, since which time it has been effective on the part of all, except that the Louisville & Nashville, on account of a temporary injunction or restraining order in another territory, postponed its operation on its lines until June 22 of that year.

When the shippers of yellow pine lumber, in the central region, taking in Louisiana east of the Mississippi River, Mississippi and Alabama, found that this advance would be insisted on, a considerable number of them formed, what they styled, the "Central Yellow Pine Association," for the purpose of resisting it.

And, after an ineffectual attempt to secure an injunction in the United States Circuit Court, in Mississippi, on July 24, 1903, filed their complaint, under Section 13 of the Act to Regulate Commerce, before the Interstate Commerce Commission, alleging *inter alia* that the advance complained of was arbitrary, unfair, unjust, unreasonable, and was the direct result of a conspiracy among the defendants and all other carriers of yellow pine lumber, and that the rates in effect prior to April 15, 1903, afforded ample compensation for the service. (See complaint before Commission, Vol. 1, pp. 5-11.) Numerous other averments were made by the complainants as tending to show why the advance complained of was unreasonable and unjust. The same are noted in the findings and report of the Interstate Commerce Commission, which, for convenience, will be elaborately abstracted in this brief.

The defendants all made answer before the Commission, and, while admitting that they derived a profit from the previous rate, denied that the rate, as advanced, was either unjust, unreasonable and excessive, or resulted otherwise than as the separate and independent action of each defendant; averred that the yellow pine industry was enjoying a high degree of prosperity and insisted upon their right to share in it.

Answers of defendants before Interstate Commerce Commission, Vol. I, pp. 13-58.

The rate in effect prior to April 15, 1903, from producing points in the territory in question to Cairo, for example, was 14 cents per 100 pounds. The balance of the through rate to points of destination, in Central Freight Association territory, was made up by adding the local tariff of the carriers beyond these river crossings.

That produced a rate to Chicago, for illustration, of 26 cents per 100 pounds, as against a previous rate of 24 cents. The freight on a 60,000-pound car, loaded to capacity, being $156, although, as a matter of fact, many carloads ran to 80,000 pounds and above, making a rate, on the 26 cents basis, of $208, or more, per car.

As a result of numerous adjustments between the lines west and east of the river, a 13-cent rate had been put into and remained in effect from April 1, 1894, until September 9, 1899, when there was a uniform advance to 14 cents, and this latter rate remained undisturbed until the Southern Railway, which, in the meantime, had acquired the Mobile & Ohio, through its traffic manager, Mr. Powell, instigated the movement resulting in the "*understanding*" reached at St. Louis on January 30, 1903.

During the entire period, and now, allowances, ranging from 2 cents to 4 cents per 100 pounds, were and are made by the trunk lines west of the Mississippi River to

all their patrons who own logging roads ten miles in length, or above, and used to bring logs from the forest to their mills at all junction points. These concessions are styled "Tap Line Allowances," and are made in form to the logging roads, owned by the mill men, as part of the through freight. They are denied by the defendant lines to their patrons in precisely similar circumstances, except that the Mobile & Ohio Railroad Company appears to have made allowances to its shippers, owning logging roads, running as high as 3½ cents per 100 pounds. And, in the year 1906, the Illinois Central has conceded 2 cents per 100 pounds to logging roads on its line.

It is also true that the New Orleans & Northeastern, and the Gulf & Ship Island, for a short time, both while the 13 and 14 cents rates were in effect, made similar concessions, but, on objection of the Illinois Central mainly, the same were discontinued. There is no dispute regarding these statements.

The complaint of the Central Yellow Pine Association was fully heard before the Interstate Commerce Commission—a great mass of testimony being introduced on both sides—and the Commission made an elaborate finding and report, holding, for the reasons set out therein, that the advance on April 15, 1903, from the shipping points in question to the Ohio River, was not warranted, and that the resultant increased rates were unreasonable

and unjust; that the rates in effect prior to April 15, 1903, were remunerative to the carriers and were reasonably high.

The syllabus of the decision will be found on pages 957-959, Vol. II of the Transcript.

The following order was thereupon, on February 7, 1905, made by the Commission and duly served upon the defendants:

"It is ordered, that the advance of 2 cents per 100 pounds, established by the defendant, the Louisville & Nashville Railroad Company, on June 22, 1903, and by the other defendants herein, on April 15, 1903, over rates previously in effect, for the transportation of lumber in carloads from shipping points on defendants' respective lines in the State of Louisiana east of the Mississippi River, and in the States of Mississippi and Alabama, to Cincinnati, Louisville, Evansville, Cairo, and other points on the Ohio River, commonly called and known as Ohio River points, which said advance has since been maintained and enforced by the defendants, was, and is, excessive, unreasonable and unjust, and in violation of the provisions of the Act to Regulate Commerce; and that the rates and charges resulting from the said advance (which said rates are more specifically referred to in said report and opinion), are also excessive, unreasonable and unjust, and in violation of the provisions of the Act to Regulate Commerce; and that the defendants, the Illinois Central Railroad Company, the Gulf & Ship Island Railroad Company, the Southern Railway Company, the Mobile & Ohio Railroad Company, the New Or-

B

leans & Northeastern Railroad Company, the Alabama Great Southern Railroad Company, the Cincinnati, New Orleans & Texas Pacific Railway Company, the Alabama & Vicksburg Railway Company, the Louisville & Nashville Railroad Company, and the Mobile, Jackson & Kansas City Railroad Company, be, and each of them is hereby, notified and required to cease and desist, on or before the 1st day of April, 1905, from further maintaining or enforcing the said unlawful advance of 2 cents per 100 pounds, or the said unlawful rates resulting therefrom, for the transportation of lumber aforesaid.

"And it is further ordered, that a notice embodying this order be forthwith sent to each of the defendant corporations, together with a copy of the report of the Commission herein, in conformity with the provisions of Section 15 of the Act to Regulate Commerce."

The defendants refusing to obey this order, the present suit was instituted June 17, 1905, in the United States Circuit Court for the Eastern District of Louisiana, the petition or bill reciting the complaint of the Central Yellow Pine Association; the answers of the defendant thereto; the hearing, the findings, conclusions and order of the Commission (all of which were made exhibits) and averring the continued refusal of the defendants to obey.

Vol. I, pp. 1-92.

The defendants answered, denying that the said advance was unwarranted; denied that it resulted in rates excessive, unreasonable or unjust; or, that said advance

or rates was or were in violation of the Act to Regulate Commerce. And averred that said advance of 2 cents on said lumber rates, and the lumber rates resulting were just and reasonably low, and fully warranted by the provisions of said act.

Answer of defendants, Vol. 1, pp. 103-106.

Additional testimony was taken on both sides, and, the case being submitted May 1, 1906, on November 26, 1906, a final decree was rendered, affirming, in all things, the order made by the Interstate Commerce Commission, and enjoining the defendants from further maintaining or enforcing said advance of 2 cents per 100 pounds, established by the Louisville & Nashville Railroad Company, June 22, 1903, and by the other defendants, April 15, 1903, over rates previously in effect, on their respective lines, in the State of Louisiana east of the Mississippi River, and in the States of Mississippi and Alabama, to Cincinnati, Louisville, Evansville, Cairo and other points on the Ohio River, commonly known as "Ohio River Crossings," and from further charging for the transportation of lumber as aforesaid the rates resulting from said advance.

Vol. I, pp. 5-13.

The appeal is prosecuted from this decree by all the defendants.

In the assignment of errors it is asserted that the decree was wrong because the advance condemned was not unjust, unreasonable or excessive; that it was error to grant the injunction because no ground was shown in the pleadings or in the proof to justify it; that it was error to tax the costs against defendants; that the Court erred in decreeing, in effect, that said advance was made under circumstances and conditions which eliminated all competition between the defendants, whereas the exact reverse was the case; that it was error not to dismiss the bill because the Court exercised the legislative function of making a rate; that the Court erred in decreeing, in effect, that the advance was excessive, unreasonable and unjust, because the charges made on shipments to the points named, when destined to points north of the Ohio River, are mere divisions of through rates, the justness of which neither the Interstate Commerce Commission nor the Circuit Court had jurisdiction to determine. And, *lastly*, that it was error to decree the injunction because the Interstate Commerce Commission only found that said advance in rates *to* Ohio River Crossings was unreasonable and unjust, and did not find that the rates to points (beyond) basing on Ohio River Crossings were unreasonable and unjust.

FINDINGS OF THE COMMISSION AND NOTES.

After a very thorough investigation and the fullest consideration of the complaint of The Central Yellow Pine Association and of the defenses set up by the roads, the Interstate Commerce Commission found and reported the facts which follow:

(*a*) The producing districts concerned may be divided into, first, territory west of the Mississippi River, composed of Louisiana west of that river, and Arkansas and Texas; second, Louisiana east of the river, Mississippi and part of Alabama, and third, Georgia, Florida and part of Alabama called Southeastern Territory. The lumbermen in each of the districts compete in the sale of their products in the same markets, which are principally in the territory on and north of the Ohio River, and on and between the Mississippi River, on the west, and a line running through Buffalo and Pittsburg on the east, known as "Central Freight Association Territory." The defendant roads are located in the second of these districts, viz.: that east of the Mississippi in Louisiana, Mississippi and part of Alabama, and run through and across the lumber-producing sections of that territory.

(Vol. II., p. 962.)

(*b*) The advance in the rates complained of was from the lumber-producting territories west as well as east of the Mississippi River, and was made, in fact, though not expressly, by agreement between the defendants and the

roads west of the Mississippi. Several meetings were held and consultations had between the representatives of the lines serving both territories, which finally resulted in the advances made. It was understood to be impracticable for the lines east of the Mississippi to advance their rates without a corresponding advance by the lines west, and consequently there was a concurrence or agreement between them before the advance was made The roads east of the Mississippi, the defendants, appear to have taken the initiative in this matter.

The advance was effective April 15, 1903, except as to the Louisville and Nashville, as to which it became effective June 22, 1903, and was made applicable to St. Louis, East St. Louis and all Mississippi River crossings from St. Louis to and including Memphis, and to all Ohio River crossings from Cairo to Cincinnati, both inclusive.

At Cairo traffic from the mills in a large portion of the lumber-producing districts west as well as east of the Mississippi River, meets or converges *en route* to destinations; the line to Cairo being the short line from the greater part of those districts. The rates to the Ohio River crossings, Evansville, Louisville and Cincinnati, are said to be based on Cairo; that is, they bear a fixed relation to the Cairo rate, being higher by certain amounts and being correspondingly advanced or reduced as the Cairo rate is advanced or reduced.

The through rate to interior points beyond the Ohio River in Central Freight Association Territory are made

up of the full local rates of the roads north of the Ohio River, as the proportion of those roads, and whatever is left of the through rates as the proportion of the roads south of the Ohio. The rates to interior points north of the Ohio are made on the lowest combinations of rates to the Ohio, plus the rates beyond, and are blanket rates, being the same from all shipping points or points of production to the same destination.

The Ohio River point rates are to the north bank of the Ohio River, and include or absorb the bridge tolls. The bridge tolls, or transfer charges, are 2 cents per 100 pounds at Cairo, 1 1-2 cents at Evansville, 1 cent at Louisville and 2 cents at Cincinnati.

(*c*) The rates from this district and from Louisiana west of the Mississippi and Arkansas at the date of the advance of 2 cents, April 15, 1903, and as increased by the advance, were as follows:

	To			
From	Cairo	Evansville	Louisville	Cincinnati
Arkansas	16cts.	23cts.	27cts.	27cts.
Louisiana, Mississippi and Alabama	16cts.	22cts.	21cts.	23cts.

(Note.—The rate, 16 cents, from Texas points to Cairo at date of advance has been restored.)

Peoria, Indianapolis and Columbus are fairly representative points or markets for lumber in Ohio, Indiana and Illinois. The total through rates via Ohio River crossings to those points and to Chicago at the date of

the advance and as increased by the advance, were as follows:

Peoria	23 cents	25 cents
Indianapolis	24 cents	26 cents
Columbus	27 cents	29 cents
Chicago	24 cents	26 cents

Ibid., 963-964.

The roads north of the Ohio charge their full local rates from the Ohio River.

There are divisions south of the Ohio between the "originating roads," on which the lumber is chiefly manufactured and the roads intermediate between them and the Ohio River. The principal originating roads are the Gulf and Ship Island, extending from Gulfport to Jackson, Miss., and the New Orleans and Northeastern, extending from New Orleans to Meridian, Miss.

The Illinois Central connects at Jackson with the Gulf and Ship Island, and allows the latter on lumber received from it 7 cents out of the rate to the Ohio River. This under a ten-year contract beginning in 1899.

At Meridian the Mobile and Ohio connects with the N. O. & N. E., and allows the latter 6 cents out of the rate to the Ohio.

The Alabama and Great Southern and its connections also pay at Meridian to the originating road a division of 6 cents.

(Same, p. 965.)

(*d*) The divisions allowed the originating roads are large in proportion to the length of their hauls and to

the balances left to the intermediate roads—*e. g.*, the average distance from shipping points on the G. & S. I. to Jackson is eighty miles. At 7 cents per 100 pounds for a haul of this distance the rate per ton per mile is 1.75 cents, or 17 1-2 mills.

Out of the balance of the 16-cent rate to Cairo, to wit: 9 cents, left to the Illinois Central for the haul from Jackson to Cairo, a distance of 366 miles, comes the bridge toll of 2 cents, leaving a net rate of 7 cents, which amounts to 3.8 mills per ton per mile.

While the rate per ton per mile yielded to the intermediate roads is small, the rate per ton per mile under the total rate to the Ohio, *which the shipper has to pay,* is materially larger—*e. g.*, taking eighty miles as the average distance on the G. & S. I. to Jackson, and the distance from Jackson to Cairo as 366 miles, there is a total of 446 miles, and for this distance the total rate of 16 cents yields a rate per ton per mile of 7.17 mills.

The short line distances from the two representative shipping points—Hattiesburg, Miss., on the N. O. & N. E., and McComb City, Miss., on the I. C.—to Ohio River points, the total rates to those points as advanced and the rate per ton per mile are as follows:

	From Hattiesburg			From McComb City		
To	Miles.	Rates.	Rates Per Ton Per Mile.	Miles.	Rates.	Rates Per Ton Per Mile.
Cairo	432	16 cts.	7.4 mills	444	16 cts.	7.2 mills
Evansville	578	22 cts.	7.6 mills	584	22 cts.	7.5 mills
Louisville	622	21 cts.	6.7 mills	643	21 cts.	6.5 mills
Cincinnati	709	23 cts.	6.4 mills	757	23 cts.	6.0 mills

Under the rates in force at the time of the advance, April 15, 1903, to wit: 14 cents to Cairo, 20 cents to Evansville, 19 cents to Louisville and 21 cents to Cincinnati, the rates per ton per mile were as follows:

To	From Hattiesburg Rates Per Ton Per Mile.	From McComb City Rates Per Ton Per Mile.
Cairo	6.04 mills	6.3 mills
Evansville	6.09 mills	6.8 mills
Louisville	6.1 mills	5.9 mills
Cincinnati	5.9 mills	5.5 mills

The average from Hattiesburg is 6.3 mills per ton per mile, and from McComb City 6.1 mills. Pine lumber via Ohio River crossings to points north is not always shipped by the short lines, but the rates are the lowest combination of the rates to the Ohio, plus the rates beyond. The advanced rates per ton per mile by the shortest available lines from representative shipping points in Alabama, Mississippi, and that part of Louisiana east of the Mississippi River to Peoria, Indianapolis, Columbus and Chicago are as follows:

Peoria	6.45 mills	
Indianapolis	6.77 mills	
Columbus	6.25 mills	
Chicago	6.07 mills	Avge. 6.38

Same, p. 966.

Pine lumber is a low class traffic (Class 6 under both the Southern and Official Classification), much below the average classification, but the average rate per ton per mile on lumber originating on the Illinois Central road

in 1903 was greater than the average on all traffic, 5.91 mills. The lumber rates per ton per mile, involved in this case, are higher than those between numerous other points.

(*e*) Prior to 1894 the roads west of the Mississippi claimed and were allowed a differential of 2 cents, which resulted to the disadvantage of shippers east of the river. A readjustment was made by the roads east of the river on May 1, 1894, and the rate to Cairo reduced to 13 cents per 100 pounds, that being the rate west of the river. The shippers from the two territories were thus placed on an equality so far as the *published* rates were concerned. The 13-cent remained in effect until September 9, 1899, a period of about five years, when it was advanced to 14 cents. It remained 14 cents from September 9, 1899, to April 15, 1903, when the advance complained of was made. The rates to the other crossings, based on Cairo, and corresponding changes were made in them.

Ibid., 966-67.

(*f*) Mills are located generally on railway lines where they traverse the lumber-producing districts. Until cut away near the mills the logs are hauled by teams; then railways, called logging roads, are built into the timber.

The lines west of the river make certain allowances to the mill owners for the transportation of the logs over these logging roads to their mills. This is called a "tap line allowance or division" and ranges from 1 and 2 cents per 100 pounds up to 6 cents, and varies to some extent according to the destination of the traffic.

The mills east of the river have logging roads of same kind, but the defendant roads, as a rule, make no tap line allowance to them. The only exception is the Mobile and Ohio, which does grant such allowances to about four mills on its line.

The N. O. & N. E. has from time to time put in a tap line allowance of 2 cents per 100 pounds, but the other roads east of the Mississippi objected and they were withdrawn.

There does not appear to be any reason for the allowance of tap line divisions west of the Mississippi which does not apply east of the river.

The tap line allowance west of the river amounts to a rebate or reduction from the regularly published rate, and gives an advantage to the mills in that territory over those east of the Mississippi, although the published rates from both are the same.

Ibid., pp. 967, 968.

(*g*) The first lumber business east of the Mississippi after the Civil War was local. Little was shipped north of the Ohio River. In 1875 lumber began to move north of the Ohio, and the tonnage has greatly and almost continually increased from that time. In 1877 and 1878 the demand north of the Ohio River was greater than the mills could supply and the price was advanced. Shipments from points on the L. & N. in Florida and Alabama increased from 2,540 cars in 1888 to 7011 cars in 1902 and 6,502 for the nine months in 1903 ended September 30th.

The shipments in 1903, on April 15th, of which year the advance of 2 cents was made, were largely greater than those of the preceding year, 1902.

Eastman, Gardiner & Co.'s shipments from Laurel, the terminus of the Laurel branch of the G. & S. I. increased from 2,712 carloads in 1890 to 3,530 in 1903, a gain of 818 cars.

The movement via the Southern Railway from points in Florida, Georgia, Alabama, Mississippi and East Louisiana for the ten months ending October 31, 1902, was 8,027 cars, and for the corresponding period of 1903, 9,743 cars, an increase of 1,716 cars, or 21.3 per cent. The increase for the first quarter of 1903 preceding the advance was 29.5 per cent., and for the remainder of the year following 18.2 per cent.

For the first ten months of 1902 the movement by the N. O. & N. E. was 5,067 cars, and for the corresponding period of 1903 was 6039 cars.

The movement of lumber from Alabama, Florida, Georgia, Louisiana and Mississippi, through Cairo and Mounds, Illinois, was, in 1902, 18,269 cars, and, during 1903, 20,540 cars, an increase of 2,271 cars.

Ibid., pp. 968-969.

(*h*) The total lumber shipped from Mississippi and that part of Louisiana east of the Mississippi River is approximately 12,300 cars per month, or 147,600 cars per annum. Of this, 180,000 cars go to interior points and the balance to the sea-coast for export.

The estimate of shipments to the interior expressed in feet is 1,500,000,000 feet. The capital invested in the lumber business, exclusive of the lumber, in Mississippi, East Louisiana and Alabama, is estimated at $5,000,000, and the total annual value of the lumber produced at $16,000,000.

Ibid., p. 969. Printed volume, pp. 969-70.

(*i*) The advance of 2 cents per 100 pounds amounts in the aggregate to a materially large sum. The average loading per car of 404 cars, shipped from the mills of Eastman, Gardiner & Co. during June, 1903, was 43,538 pounds. On this carload the advance is something over $8.70, and on the 404 cars over $3,514.80. The aggregate of the increase at this average on the 118,000 cars would be $1,026,600.

The average weight per 1,000 feet of lumber is approximately 3,300 pounds. The advance on this average would be 66 cents per 1,000 feet, and on 1,500,000,000 feet would be $990,000 from Mississippi and East Louisiana.

Ibid., pp. 969-970.

(*j*) Tables are set out showing the prices of various grades of lumber in the Chicago market, January 1, 1892, and September 30, 1903.

There was a decline in two classes and an increase in one.

During the period, January, 1892, to September, 1903, there were many variations, being lowest from 1895 to 1899.

For the years 1895, 1896, 1897, 1898 and 1899, third quarter fluctuations are shown, the highest prices being in 1896 and 1899, and the lowest in 1897 and 1898.

A decline is shown in all grades in 1901 over 1902, first quarter, the advance running from $2.00 to $2.50 in 1902, and a stationary figure in the last quarter of 1903, except in grade "A" where there was a decline of $1.00 per thousand feet.

Ibid., p. 970.

The St. Louis market showed variations in prices between January 15, 1900, and April, 1903, some instances lower and some higher.

See Tables, Printed Volume, page 971.

The average prices of the lumber sold at the mills of the Gary-Fatheree Lumber Company, of Perry, Miss., the J. J. Newman Lumber Company, of Hattiesburg, Miss., and the J. E. North Lumber Company, of Bond, Miss., were for the periods named, as follows:

GARY-FATHEREE LUMBER COMPANY.

From April to December 31, 1900	$12.24
For the year 1901	10.45
For the year 1902	10.97
From January 1 to October 31, 1903	12.54

J. J. NEWMAN LUMBER COMPANY.

For the year 1900	$10.89
For the year 1901	10.36
For the year 1902	11.20
For the ten months ending October 31, 1903	10.54

J. E. North Lumber Company.

From January 31 to December 31, 1901.....$11.52
For the year 1902.....12.01
For the ten months ending October 31, 1903.....10.24

It appeared that the mill men had not been able to add the 2 cent advance to their prices. And after April 15th, to the date of the opinion, profits had been decreased by the amount of the advance.

Ibid., p. 971.

(*k*) In estimating the cost incident to manufacture, the mill men examined added stumpage. It varies in price according to its location and quality from $1 to $3.50 per thousand feet. The further items of cost are labor, management of the business, supplies of all kinds, taxes, insurance and depreciation of the property.

Following are statements for the years ending April 30, 1902 and 1903, respectively, of the average sale price at the mills of The Fernwood Lumber Company of Fernwood, Miss., the cost of manufacture, including stumpage, and the profit or difference.

May 1, 1901, to April 30, 1902.

Manufactured feet	Mill Cost in delivering 1.00 stumpage.	Average sale Price		Differerence for year
21,758,871	$9.39	$11.43	$2.04	$44,381.09

May 1, 1902, to April 30, 1903.

Manufactured feet	Mill cost per M. including stumpage at $2.25	Average sale price	Different cost and sale price	Different cost and sale price for year
23,296,773	$10.93	$12.35	$1.42	$33,081.41

(the stumpage in second statement is given at $2.25, because the market price had advanced to that figure. In

the above estimates of cost of manufacture, interest is excluded.)

Ibid., p. 972.

The capital invested in the Fernwood plant is over $598,690. The difference between sales price and cost for the year ending June 30, 1902, $44,388.09, is over 7 per cent. on that capital, and the difference the next year is about 6 per cent.

The capacity of Eastman, Gardiner & Company mills is 60,000,000 feet per annum, and its average profit $1.27 per thousand, or $76,200—the capital invested, excluding the land, is $600,000 to $700,000. Above represents a profit of 10.88 per cent. on a $700,000 investment.

Ibid., pp. 972-93.

The lumber business has constantly grown since it started. Eastman, Gardiner & Co.'s capacity increased from 25,000,000 feet to 60,000,000 feet, and their sales were 5,000,000 feet greater up to December, 1903, than for the preceding year, but the average price per 1000 was 48 cents less.

Ibid., p. 973.

(*l*) It is estimated that the annual depreciation of mill property is 10 per cent. After the timber is exhausted, the mills have comparatively little value.

Lands denuded of the timber are valuable for farming purposes. As the timber has been cut and the country cleared up near the railroad the development in agriculture and enterprises of all sorts has been material.

A number of flourishing towns have grown up between New Orleans and Jackson and elsewhere in the lumber districts. There are mentioned McComb City with a population of 6000, Brookhaven, Crystal Springs, Summit and Hazlehurst.

There are cotton plantations, cotton factories and oil mills. The value of the ordinary farming lands in the section along the railroads where there had been pine forests has grown and varies from $5 to $10 per acre.

Ibid., p. 974.

There has been no falling off in values of pine lands since the advance, nor any diminution in the output of lumber by reason of the advance. The value of the property and the output has not diminshed. The effect has been simply to diminish the net earnings of the mills.

(*m*) Statements of defendant railroads show increase in wages paid, and in the price of material and equipment required, such as steel rails, coal, lumber, locomotives, box, coal and flat cars. The statements relate principally to the period of five years from June 30, 1898, to June 30, 1903.

While there has been a material increase in the cost of steel rails during those five years, the price in 1899 being $20.75 per ton, and, in 1903, $31.82 per ton, there does not appear to have been any material advance for the last three of those years. The prices for 1901 being $31.12, for 1902, $29.97, and for 1903, $31.82.

The cost of coal in 1901 was $1.78, in 1902, $1.76, and in 1903, $1.96.

From July, 1897, to June, 1900, the average cost of coal at the mines (coal used by the Illinois Central) was 25.36 cents, and from the latter date up to June, 1903, there has been an increase of a little over 10 cents a ton.

The average price paid for lumber, 1900 to 1903, did not materially change.

The mill prices paid for stringers and bridge ties by the N. O. & N. E. were the same for both years, 1902 and 1903, being $15 for stringers and $11.50 for ties, and for guide rails the price in 1902 was $11, and in 1903, $12. that being the only increase.

Ibid., p. 974.

The aggregate amounts paid annually for locomotives, box, flat and coal cars, have increased and also their prices. The aggregate increase is due largely, if not mainly, to the increase in the number bought, and the advance in price is due principally to the fine quality and greater capacity of the equipment used.

Ibid., pp. 974-975.

There has been a material increase in the total amount of wages paid employees, including engineers, firemen, brakemen, switchmen, trackmen, etc., from 1898 to 1903, which is also attributable to the increase in the number of such employees as well as to an advance in their wages.

The wages of the employees of the mill companies have also grown higher, and the prices of the supplies required in the manufacture of lumber have increased. The supplies are to a large extent the same as those used by

the railroads, such, for example, as rails, ties, etc., for the logging roads. Increase in cost of manufacture in the five years is estimated at 10 per cent.

Ibid., p. 975.

(*n*) The operating expenses of the carriers have constantly grown larger, but due mainly to the constant growth or enlargement of their business. This growth has resulted from the large mileage, the development and increased prosperity of the country, and from advancement in methods of operation and additions to and improvements in equipment of all kinds.

The business of the roads, or the tonnage of traffic transported by them, not only of lumber, but in traffic generally, has grown to a most material extent.

While operating expenses have increased, for the reasons named, there has also been a constant increase in gross earnings to such an extent that there has been a constant increase in net earnings.

Ibid., p. 975.

Then follows a table (pages 976-977) taken from the reports of the defendants to the Commission, showing for the years named, 1890-1903: (1) Gross earnings from operation, (2) total operating expenses, (3) percentage of operating expenses to earnings, (4) net earnings, (5) net earnings per mile of road, (6) total mileage operated.

In 1890 the gross earnings of the Illinois Central (lines south of Cairo) were $5,644,115, and in 1903, $16,193,850,

an increase of $10,549,735. The percentage of operating expenses was increased 2.69 per cent., net earnings were increased $3,476,804. The mileage operated in 1890 was 894.41 miles, and in 1903, 1374.71 miles. Net earnings per mile in 1890 were $2,340, and in 1903, $4,051, an increase of $1,711 per mile. (Note: $4,051 per mile is equal to 5 per cent. on over $80,000 a mile.)

The net earnings of the L. & N. south of the Ohio River increased from $4,949,720 in 1890 to $10,872,126 in 1903. Its mileage being increased to 1930.78 miles.

The net earnings of the Southern Railway in Virginia and Carolinas increased from $3,230,752 in 1890 to $6,970,628 in 1903.

While its lines west of Virginia and the Carolinas increased their net earnings from $2,357,254 in 1890 to $5,088,860 in 1903.

The Cincinnati, N. O. & T. P. R. R. increased its net earnings from $1,670,439 in 1890 to $1,722,009 in 1903. Its net earnings being, in 1903, $5,099 per mile or over 6 1-2 per cent. on $75,000 a mile.

The N. O. & N. E. increased its net earnings from $367,279 in 1890 to $1,314,333 in 1903, net per mile $3479.

The Mobile & Ohio's net earnings were increased from $921,202 in 1890 to $1,759,318 in 1903. From $1,340 to $2,013 per mile.

The Alabama & Vicksburg increased its net earnings from $200,115 in 1890 to $330,073 in 1903. From $1396 to $2312 per mile.

The Gulf & Ship Island's increase in mileage between

those years was 176.25. Its net earnings were increased from $22,198 to $653,360. From $317 a mile to $2286.

In the "total operating expenses" of these roads are included expenditures which result in permanent improvements or betterment of the property of the roads, such as expenditures for right of way and station grounds, real estate, grading, tunnels, bridges, culverts, trestles, rails, ties, crossings and cattle guards, telegraph lines, station buildings and fixtures, shops, roundhouses, turn-tables, water sections, fuel stations, grain elevators, storage warehouses, docks and wharves, electric light plants, electric motive power plants, gas-making plants and miscellaneous structures.

Also expenditures for locomotives and cars of all kinds.

Then follows a table showing the expenditures of these roads for the years ended June 30, 1901, 1902 and 1903, for permanent improvements or betterments and also for locomotive and car equipment, and included under the head of "total operating expenses." The first under the heading "on account of construction," and the latter "on account of equipment."

The Southern's outlay in 1903, on account of construction was $493,358, and on account of equipment, $1,350,328.

The L. & N., in 1900-1901, paid out $1,218,273, account of construction, and $313,525 for equipment. In 1901-1902, account of construction, $1,060,887, and on account of equipment, $428,220. In 1902-1903, $1,482,550 for construction and $518,820 for equipment.

The C., N. O. & T. P., in 1900-1901, paid out for construction $355,356. In 1901-1902, for construction $202,674, and in 1902-1903, same account, $401,959.

The Alabama Great Southern expended $18,130 in 1901-1902, and in 1902-1903, $113,037 for construction.

The N. O. & N. E., in 1900-1901, expended $85,480, on account of construction, and $40,611, account of equipment. In 1901-1902, $73,154, account of construction, and $81,912, account of equipment. In 1902-1903, for construction, $196,380, and account of equipment, $75,858.

The A. & V., account of construction, 1900-1901, $74,609 and equipment $72,971. In 1901-1902, construction, $97,669, equipment, $45,168. In 1902-1903, construction $173,574, and equipment, $87,546.

Note.—All of these outlays were included in expenses of operation.

Ibid., p. 979.

(*o*) While the thirteen cent rate to Cairo was in force, 1894 to 1899, it yielded a profit to the carriers.

The same is true of the fourteent cent rate in force from 1899 to April 15, 1903.

> "This rate of 14 cents appears to be reasonably high when compared with the rates on other kinds of lumber and yellow pine lumber from other points, and when compared with the rates on other commodities at all analogous to lumber in respect to value, volume, and the various circumstances and conditions affecting the transportation of traffic."
>
> *Ibid.*, p. 980.

From 1894 to 1899, under the thirteen cent rates, and from 1899 to 1903, under the fourteen cent rate, there was a steady annual growth in net earnings of the defendants, except the Cincinnati, N. O. & T. P.

The net earnings of the defendant roads at the beginning and conclusion of each of these periods were as follows:

NET EARNINGS UNDER 13 CENT RATE.

ROADS	1899	1902.
Southern Railway	$8,853,160	$12,076,220
Illinois Central	6,762,382	9,911,408
Louisville & Nashville	7,052,156	8,250,275
Cincinnati, N. O. & T. P.	1,104,591	1,758,931
Alabama Great Southern	580,075	642,285
N. O. & N. E.	278,098	439,150
Mobile & Ohio	1,009,393	1,182,238
Alabama & Vicksburg	151,871	216,154
Gulf & Ship Island (1897)	22,198	110,563

NET EARNINGS UNDER 14 CENT RATE.

ROADS	1895	1899.
Southern Railway	$5,558,006	$8,853,160
Illinois Central	9,911,408	14,572,907
Louisville & Nashville	8,250,275	9,851,946
Cincinnati, N. O. & T. P.	1,758,931	1,636,797
Alabama Great Southern	642,285	798,771
N. O. & N. E.	439,150	592,128
Mobile & Ohio	1,182,238	1,625,019
Alabama & Vicksburg	216,154	278,956
Gulf & Ship Island	110,563	452,563

Note.—Up to September 9, 1899, the earnings were under the 13 cent rate.

(*p*) The testimony in relation to the financial history and transactions of defendants, their capitalization, funded debts, cost of construction, etc., is conflicting and does not show either the total cost of construction or present value of the roads and their property used for the public convenience.

Their financial condition has steadily improved up to and including the year 1903, the year of the advance. They were prosperous at the date of and for years prior to the advance; they were doing a largely increased business, with, it is true, a largely increased expense, but there was, as a rule, with no material exceptions, a constant increase from year to year in *net* earnings. Their reports show dividends declared by them as follows:

Ibid, pp. 980-981.

The Southern, 1897 to 1903, inclusive, ranging from $543,000, 1 per cent. on $54,300,000 preferred stock; in 1897 up to $4,500,000, 7 1-2 per cent. on $60,000,000 of preferred stock in 1903.

The Illinois Central has declared dividends for each year 1888 to 1903, both inclusive, 1888, $2,450,000, being 3 1-2 per cent. on $30,000,000 and 3 1-2 per cent. on $40,000,000 of common stock, and, in 1903, $5,702,400, being 6 per cent. on $95,040,000 of common stock.

(Note in 1904-05 it ordered paid a dividend of 7 per cent on same amount of stock.)

The Louisville and Nashville has declared dividends each year 1899 to 1903, both inclusive, ranging from

$1,848,000, about 3 per cent. on $54,911,500 of common stock in 1899, up to $3,000,000, 5 per cent. on $60,000,000 of common stock in 1903.

The Alabama & Vicksburg has declared dividends for each year 1897 to 1903, both inclusive, ranging from $21,000, 3 per cent. on $700,000 common stock in 1887 up to $63,000, 6 per cent. on $1,050,000 of common stock in 1903.

The Alabama Great Southern has declared dividends for each year from 1896 to 1903, both inclusive, ranging from $190,571, 5.64 per cent. on $3,380,050 of preferred stock in 1896, up to $309,061, 9.15 per cent. on $3,380,350 preferred stock in 1903.

The Cincinnati, N. O. & T. P. has declared a dividend for the year 1903, being $100,000, 5 per cent. on $2,000,000 preferred stock.

In 1903 the Mobile & Ohio declared a dividend of $107,412, 2 per cent. on $5,370,600 of common stock.

In 1903, the Gulf & Ship Island declared a dividend of $100,000, 2 per cent. on $5,000,000 of common stock.

All the defendants, in addition to paying dividends, also report large surpluses earned.

The New Orleans & North Eastern appears to have declared no dividends, but reports a growing (with the exception of 1901) surplus for each year from 1900 to 1903, both inclusive, to wit:

In 1900, $139,411, in 1901, $90,547, in 1902, $193,045, in 1903, $253,809.

Ibid., pp. 981-982.

(*q*) The car equipment and the yard and shop facilities of the roads were not sufficient to enable them to handle with dispatch the large increase in the volume of the lumber traffic and traffic generally during 1902 and the spring of 1903. The net results could have been much improved if the transportation had not been under congested conditions. This was principally at junctions and terminal points.

Notwithstanding the congestion, the gross and net earnings of the roads continued to increase and were very large during the time it prevailed.

The freight transportation equipments and facilities of the roads have now (February, 1905) been generally improved, both in quality and quantity, and also, their road-beds and physical conditions generally. While the money spent has been added to operating expenses, the improvements not only increased the carrying capacity of the roads, and consequently their earnings, but have also lessened the cost of operation. The testimony of witnesses for the roads is that a decrease in rates on traffic in general has been "going on throughout the United States" since the improvements in transportation have been put in operation.

(*r*) No special equipment is furnished or required for the hauling of lumber. It may be moved in open or flat cars, gondola cars or box cars, which are also used in handling other traffic.

Open or flat and gondola cars are used for undressed

and rough lumber or which is too long for box cars. Box cars are used for the dressed or better class of lumber.

On the Mobile & Ohio it is said 65 per cent. of the cars used for lumber are flat or open, while on the other roads only about 15 to 30 per cent. of the cars used are flat or open.

During the representative month of March, 1903, 649 lumber cars were shipped over the L. & N., of which 519 or 80 per cent, were box cars and 20 per cent. flat or gondola cars. The difference, in this respect, between the M. & O. and the other roads, is said to be because the lumber of the M. & O. is not of as high a grade.

It costs somewhat less and is easier to load with lumber on an open than a box car, but the rates on the open cars, while now the same, were formerly higher than on box cars; having been at one time 7 cents higher, and afterwards 3 cents. That difference was stated to have been because box are more adopted to other freight than open cars, and fewer of the former therefore return empty. A large proportion of the box cars come south loaded with grain and merchandise. The gondolas are used by the roads to a large extent in hauling coal south, but for the most part the open or flat cars return empty. The testimony does not show the proportion definitely.

Ibid., pp. 988-984.

Open on flat cars are equipped with standards, braces and supporters by the shippers every time they are used to ship lumber. This is done at the shipper's expense,

and where the equipment is according to the requirements of the Master Car Builders' Association rules it costs $3.50 a car.

(*s*) Cars transporting lumber are not, as a rule, loaded to their capacity.

The greater the proportion of open cars the greater is the loading to stenciled capacity. For lack of cubical space, box cars, built primarily for grain and merchandise, cannot be loaded with lumber to their stenciled capacity.

The loadings are given by different roads, 74.1 per cent., 69.6 per cent., 85 per cent. and 75 per cent. (I. C.)

The average loading of green lumber on 20 cars by the I. C. is given at 102 per cent.

Ibid., pp. 984-985

The following table gives the car capacity and actual loading of certain commodities named, other than yellow pine lumber:

	No. of Cars.	Loading lbs.	Capacity	Loading Percentage of Capacity
Cypress Lumber	17	595,000	738,000	81.11
Oak Lumber	8	384,450	490,000	78.47
Cypress shingles	17	716,600	1,060,000	67.75
Sash weights	6	253,868	400,000	63.38
Window Glass	9	433,800	610,000	71.00
Cement	20	780,750	1,170,000	66.70
Lime	15	379,400	846,000	44.32
Fertilizers	27	1,089,200	1,630,000	66.79
Cotton seed meal	8	250,000	450,000	55.00
Cotton seed hulls	38	1,047,400	2,228,000	47.00
Live stock	6	138,240	340,000	40.60
Furniture	3	39,000	180,000	22.11
Coal	4	241,000	270,000	89.50

These shipments were for the most part over the roads of defendants in 1903.

Commission Record, p. 985.

Lumber shippers make requisitions for cars of certain capacities to meet different orders, when, because of scarcity of equipment, they have not a car of the capacity ordered the carriers frequently furnish one of greater capacity. This necessitates underloading on the part of the shippers, *e. g.*, a 60,000 lbs. car will be furnished when one of 40,000 capacity is called for.

(*t*) The tonnage of lumber hauled by defendants and other roads throughout the United States is very large in proportion to that of other commodities.

Here follows a table made up from the reports of the roads to the Commission, from which it appears that the tonnage of lumber transported during the year 1901 was greater than that of all commodities named, except bituminous and anthracite coal, and during 1902 and 1903 greater than that of all, except bituminous coal:

The conclusions of the Commission are reproduced here:

CONCLUSIONS.

1. The question in this case is whether the advance of 2 cents in the rate, effective April 15, 1903, and made applicable south of the Ohio, was justifiable. Prior to the advance, from September 9, 1899, to the date of the advance, nearly four years, the rate to Cairo had been 14

cents and the advance complained of raised it to 16 cents. From September 9, 1899, back to May 1, 1894, a period of five years and four months, the rate had been 13 cents, 3 cents less than the advanced rate. When carriers advance a rate which has been for some time in force, the burden of proof is upon them to show sufficient grounds for such advance. (*Holmes vs. Southern Ry. Co.*, 8 I. C. C. R., 568). The defendants, recognizing this, seek to justify the advance, first, on the ground that the yellow pine industry was enjoying great prosperity, "that" (in the language of their answer) "profits heretofore and now derived fom the mills * * * are unusual and excessivey large," and that they (the defendants) had a right to participate in this alleged prosperity.

It is true the lumber business has grown from its inception and was at the date of the advance larger and possibly more prosperous than it had been, but the proof does not show that for the two or three years preceding the advance the prices of the mill products had been materially increased or that the profits realized on the business were "unusual or excessively large." Conceding, however, for argument's sake, that the lumber business had at the date of the advance become phenomenally prosperous and remunerative, this could not justify an advance of a rate already reasonably high.

The test of the reasonableness of a rate is not the amount of the profit in the business of a shipper or manufacturer, but whether the rate yields a reasonable com-

pensation for the service rendered. If the prosperity of the manufacturer is to have a controlling influence, this would justify a higher rate on the traffic of the prosperous manufacturer than on that of one less prosperous. The right to participate in the prosperity of a shipper *by raising rates* is simply a license to the carrier to appropriate that prosperity or, in other words, to transfer the shipper's legitimate profit in his business from the shipper to the carrier. The increased prosperity of shippers along the line of a railway enlarges the business of those shippers and, as a consequence, both the tonnage of traffic which they receive in their business and which they ship to their customers. In this way the carrier necessarily and justly participates in, or is benefited by, the prosperity of the shipper. This appears to be the case with these defendants, as the tonnage of lumber shipped by complainant's members over defendant's lines and the revenue of defendants therefrom have constantly grown in amount.

The question as to the right of a carrier to participate in the prosperity of its patrons was presented to this Commission in "*In re Proposed Advances in Freight Rates*," 9 I. C. C. R., 405, and in discussing it we said:

"Carriers insist that inasmuch as the prices of articles transported have advanced the rate ought also to advance; otherwise expressed that they should share in the general prosperity.

"While within the last four years the prices of nearly all commodities of general consumption have materially risen, the freight rate has not advanced to a corresponding extent. If therefore that rate is to be treated as an article of merchandise, it is difficult to see why the position of the carriers is not well taken. It is not, however, properly so regarded. Transportation by rail is a service of a quasi-public nature not to be sold to the highest bidder, nor subject to the laws of supply and demand. This sufficiently appears from the provisions of the act regulating commerce, which requires the same rate to be charged all persons and enjoins the publication of that rate."

2. In the next place, it is claimed in justification of the advance in the rate that it was rendered necessary by increases in the operating expenses of the defendants resulting from higher wages paid their employees and higher prices of the material and equipment used by them. The proof shows increases in wages and in prices of material and equipment, but not in a marked degree for the two years, 1901 and 1902, immediately preceding the advance in rate. These increases have doubtless added materially to operating expenses, but the total annual increases in those expenses are, of course, due only in part to the advances in wages and prices of supplies and equipment. They are attributable in a great measure to the constant growth or enlargement of the business of the roads. Not only has the lumber business

of the roads greatly increased, but their business in general. The greater the volume of business, the greater is the aggregate cost of conducting it, or, in other words, of operating the roads. The total operating expenses of the roads, as reported by them, have also been much enlarged by the inclusion therein of large expenditures for permanent improvements.

It is to be borne in mind in this connection that the operating expenses of the *mill companies* in the matter of wages and supplies required in the manufacture of lumber have also grown. These supplies are largely the same as those used by the defendant railways, and it is estimated that for the years, 1902-1903, the cost of the manufacture of lumber had increased about 10 per cent.

While the operating expenses of the defendants have constantly grown, the gross earnings from operation have also increased from year to year to such an extent as to have resulted in a constant increase of net earnings. This is shown in the tables set forth in our findings of fact (finding 14).

3. We do not think sufficient cause is shown, either in the alleged large profit in the lumber business or in the increased cost of operating the roads, for the advance in the rate on lumber. But it is further contended in behalf of the defendants that lumber, considering its character and all the conditions incident to the services rendered in its transportation, was not, at the 14-cent rate in force at the date of the advance, yielding its proper proportion

of the revenue required by the defendants to meet their expenses—in other words, that that rate as applied to lumber was not a reasonable rate, viewed from the carrier's standpoint, in that it was not adequately remunerative. The question of the reasonableness in this sense of a rate *on a single article* of traffic is one of almost insuperable difficulty.

In *Smyth vs. Ames* (*Nebraska Freight Rate Case,* 169 U. S. 466, 42 L. Ed. 819, 18 Sup. Ct. Rep. 418) there was involved an entire system of rates applicable to all traffic on the roads in the State of Nebraska and not the rate on a single commodity or article of traffic. In that case the Supreme Court held that the carrier is entitled to earn "a fair return upon the value of that which it employs for the public convenience."

The value of the entire property of a road employed for the public convenience can shed but little, if any, light upon the question whether the rate on a single, among thousand of articles of traffic, yields its proper proportion of a fair return on that value. The rate on one article of traffic may be reasonably high and the carrier fail to earn a fair return on the value of the entire property employed for the public convenience because of unreasonably low rates on other traffic, and, *vice versa,* the rate on one article of traffic may be unremunerative, or unreasonably low and the return to the carrier from its entire business may be fair or reasonably high, the de-

ficiency under the rate on the one article of traffic being made up by the rates on the balance of the traffic.

Even, however, if we be mistaken in this, it is impossible with any degree of accuracy to determine, from the voluminous and conflicting testimony on the subject introduced in behalf of both parties in this case, what is the value of the property employed by the defendants for the public convenience. At the outset of an investigation of this question, in the case of a through rate participated in by a number of connecting carriers, it must be determined whether the basis is to be the aggregate value of that which all the parties to the rate employ for the public convenience or the values separately of that which each of them so employs. The value of the property used by each road in the public service differs materially, and also the cost of operation; therefore, what would be a fair rate or return for one would not be for another and a fair return upon the aggregate value of the property of all the roads might, and probably would be, unfair to some, if not all, of them individually. In "*In re Proposed Advances in Freight Rates,*" *supra,* in which this matter was involved, the Commission says:

> "But what is the value of a railway? Does not that value depend almost wholly upon the rate which it is permitted to charge? If the rates upon a railway system are reduced without thereby stimulating the movement of traffic the value of the property is diminished. If its rates are advanced without loss of traffic the value of its property is increased.

Stated in another way: the value of a railway depends upon what it can earn on the basis of a reasonable rate; and the reasonableness of a rate depends upon the return which it will yield upon the value of the property.

"The Court" (in the *Nebraska Freight Rate Case, supra)* "pointed out certain elements which should be taken into account in determining the reasonableness of rates, and these were 'the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses.' The Court added that there might be other matters proper to be regarded in estimating the value of the property, and did not indicate the relative importance which was to be assigned to the various matters specified. *It is plain that until there be fixed, either by legislative enactment or judicial interpretation, some definite basis for the valuation of railroad property, and some limit up to which that property shall be allowed to earn upon that valuation, there can be no exact determination of these questions. In the absence of such a standard the tribunal, whether Court or Commission, which is called upon to consider this matter can only upon the whole exercise its best judgment."*

4. While the Supreme Court has undertaken to point out "certain elements" to be considered in determining the reasonableness of an entire system of rates, it has not named any as shedding light upon the reasonableness of a rate on a single commodity like lumber. It is evi-

dent that such elements are widely variant in the two cases. Where an entire system of rates is involved, the principal, if not the only, question is whether the revenue yielded by the rates on all traffic is a fair return on the value of that which is "employed for the public convenience"—a question, the determination of which, as we have shown, can have only a very remote, if any practical, bearing on the reasonableness of a rate on a single article of traffic. On the other hand, where the rate on a single article is in issue, the question (which could not arise in the former case), whether the rate is unjustly discriminatory or unduly preferential, may be presented, and the reasonableness of the rate depends upon the value, volume and other characteristics affecting the transportation of the particular commodity to which it is applied. There are many things disclosed by the evidence and set forth in our "Findings of Facts," which bear directly upon the reasonableness of the particular rate in question in this case (and not upon the rates as a whole of the defendants) and which aid us in arriving at a correct judgment in respect thereto.

5. In the first place, the present advanced rate is the last (up to date) of a series of advances and was made by joint or concerted action of the carriers. It is claimed by them that, in advancing the rate, they acted independently, each for itself, but the proof shows conclusively that the advance was the outcome of a concert of action and a previous understanding between the companies.

Through their authorized official representatives they conferred with each other repeatedly as to the making of an advance; recognized the fact that, because of competition in common markets between the lumber-producing districts served by them, the advance should be from all those districts or none, and finally they all promulgated the advance to take effect at exactly the same time and for exactly the same amount. This concurrence of action was not only between the railway companies, parties defendant in this case, and in relation to the rates charged by them, but was participated in by the lumber-hauling roads serving the territories west as well as east of the Mississippi River.

We deem it unnecessary to express an opinion as to whether this concert of action in fixing the advanced rate amounts to an unlawful agreement under the so-called "Anti-Trust Act"—the enforcement of that act being a matter properly cognizable by the Courts. It is clearly, however, within the scope of our authority and duty to consider this joint or concerted action of the defendants in the aspect of its bearing upon the reasonableness and validity of the advanced rate, the result of the action. Where rates are established by concert of action and previous understanding between the carriers, it is manifest, whether or not there be a binding agreement to maintain such rates, that the element of competition is eliminated. Concert of action is wholly inconsistent with competition and, during the time the rates

fixed by concert of action are maintained, the effect, so far as competition is concerned, is the same as if there was a binding agreement to maintain such rates.

Competition is favored by the laws. The object of the pooling section (Section 5) of the Interstate Commerce Act is to prevent "any contract, agreement or combination" between otherwise competing carriers by which competition between them may be done away with. In *East Tenn., Va. & Ga. Railway Co. vs. Interstate Commerce Commission,* it is said: "The Interstate Commerce Law, it is conceded, was intended to encourage normal competition. It forbids pooling for the very purpose of allowing competition to have effect." (99 Fed. Rep. 61.) The Supreme Court holds that the suppression of competition is violative of the so-called "Anti-Trust Act," in that such suppression restrains trade and commerce by "keeping rates and charges higher than they might otherwise be under the laws of competition." *(Joint Traffic Association case,* 171 U. S. 569, 571, 577, 43 La. Ed. 287, 288, 290, 19 Sup. Ct. Rep. 25; *U. S. vs. Freight Association,* 166 U. S. 341, 41 La. Ed. 1027, 17 Sup. Ct. Rep. 540).

The ground upon which competition is favored is that it conduces to the reasonableness of the rates or to the protection of the public from unreasonably high or excessive rates. In *United States vs. Freight Association, supra,* the Supreme Court says "competition will itself bring charges down to what may be reasonable" (166

U. S. 339, 41 La. Ed. 1027, 17 Sup. Ct. Rep. 540). The act to regulate commerce (Section 1), in prohibiting unreasonableness of rates, in effect forbids whatever conduces to such reasonableness. In any event, it is incumbent upon this Commission, when the reasonableness of rates is in issue before it, to consider how those rates were brought about—whether they are the product of untrammeled competition or the result of a concert of action or combination between the carriers establishing and maintaining them. The advanced rates complained of cannot be claimed to be the outcome of competition, because "the natural, direct and immediate effect of competition is to lower" (171 U. S. 577, 43 La. Ed. 290, 19 Sup. Ct. Rep. 25), rather than advance, rates. The advanced rates must be presumed to be higher than rates which unrestrained competition would produce.

6. As we have seen, the 14-cent rate in force at the date of the advance had been maintained nearly four years, and a still lower rate, 13 cents, had been maintained for the preceding five years and four months. "The continuance of a given rate is not conclusive evidence of the reasonableness of that rate; but when a railway company advances a rate which has been for some time in force, the fact of its continuance is ***in the nature of an admission*** against that company which tends to show the unreasonableness of the advance." (***Holmes vs. Southern Ry. Co.***, *supra.)* In addition to this *quasi* admission, we have the testimony of the officers of the defendants that there

was a profit to the defendants in the lumber traffic while the 13-cent rate was in force, and also a profit while the 14-cent rate was in force. The defendants in their answer say: "Respondents admit that under previously existing rates lumber was carried at a profit, but respondents aver that it *was not an exceedingly profitable commodity.*" No reason is given or shown why lumber should be singled out as a commodity upon which an "exceedingly" large profit should be earned. A reasonable profit is all the defendants are entitled to and the testimony is far from convincing us that the profit under the 14-cent rate was not reasonable or would not now be reasonable. As stated in our "Finding of Facts," the 14-cent rate appears to be reasonably high when compared with the rates on other commodities which are at all analogous to lumber in respect to value, volume and the various conditions affecting the service of transportation. During the period from 1894 to 1899, while the 13-cent rate was operative, there were large annual increases in the net earnings of the defendants and the same was the case from 1899 to 1903, while the 14-cent rate was operative (Finding 15). During those periods there was also a large growth in the tonnage of lumber hauled by the defendants and, therefore, their increases in net earnings were in part, at least, derived from the lumber traffic under those rates. Dividends have been declared during those periods, and, in addition, considerable surpluses have been reported (Finding 16) and large sums have

been invested in permanent improvements or betterments (Finding 14).

7. The defendants, other than the originating roads, complain of the small amount of revenue or low rate per ton per mile realized by them out of their proportions of the through rates. This is due to the large allowances out of the rates made to the originating roads. (See Findings 3 and 4.) Those allowances commenced under the lower rates in force prior to the advance and raise the presumption that those lower rates minus the allowances were then considered reasonably remunerative for the remainder of the hauls to the Ohio River crossings. As the 2 cents advance goes entirely to the roads continuing the transportation on to the Ohio and none of it to the originating roads, the inference is that advance was made solely with a view of increasing the proportions of the former roads. If the allowances to the originating roads are unreasonably large, as they appear to be from a distance standpoint, and result in unreasonably low proportions to the other roads, this cannot be remedied by an advance in the total through rates *charged the public*. It is the total rate, and not its proportions, which is in issue.

8. Although both the net and gross earnings of the defendants have grown from year to year, the percentages of what are reported by the defendants as "operating expenses" to earnings have also somewhat increased (Table, finding 14), and this is urged as showing

the necessity for an advance in the lumber and some other rates. It is to be noted that those operating expenses embrace large annual expenditures for real estate, right of way, tunnels, bridges and other strictly permanent improvements, and also for equipment, such as locomotives and cars (Finding 14). While payments for repairs, whether applied to permanent improvements or equipment, are properly chargeable to current annual operating expenses, this would not appear to be the case as to the improvements or equipment themselves—the former being permanent and the latter lasting for many years. The expenditures for permanent improvements and for equipment made in a single year may obviate the necessity for like expenditures or expenditures to the same extent for many years to come, and the extraordinary amount of such expenditures made by the defendants in a few years preceding and including the year of the advance in rates indicates that they will not be required again for a long period of time. They should not, therefore, be taxed as a part of the current or operating expenses of a single year, but should be, so far as practicable and so far as rates exacted from the public are concerned, "projected proportionately over the future." If these large amounts are deducted from the annual operating expenses reported by the defendants, it will be found that the percentage of operating expenses to earnings has in some instances diminished and in others increased to no material extent.

9. The published rate to Cairo in the territory west of the Mississippi River, embracing that part of Louisiana west of the river, Arkansas and Texas, is the same as the published rate from the territory east of the Mississippi served by the defendants, but the roads in the former territory make an allowance called a "tap line allowance" to the millers of 2 cents and over per hundred pounds for the hauling by their "logging roads" of the lumber from the forests to the mills. This is equivalent to a rebate or reduction from the published rate. Of the defendants, only the Mobile & Ohio makes such allowance. The giving of this rebate by that road and by the roads west of the Mississippi is in the nature of an admission, or raises a strong presumption, that the published rate less the rebate is a reasonably remunerative rate. The rebate was allowed by the Mobile & Ohio and roads west of the Mississippi under the rate in force at and prior to the date of the advance, April 15, 1903.

The question, whether allowances from the published rate made by the roads west of the Mississippi to logging roads or "tap lines," as they are called, owned or controlled by the lumber mills, constituted departures from such published rate in violation of the Act to Regulate Commerce, as amended February 19, 1903, was presented for decision by this Commission in the case of *The Central Yellow Pine Association* (complainant in the present case) *vs. The Vicksburg, Shreveport & Pacific Railroad Co.*, 10 I. C. C. R. 193, and it was held that the

published rate must be strictly observed; that the defendants were not authorized under the law "to grant a division of the rate to the owner of a lumber mill as compensation to him for the cost of bringing his logs to the mill by steam railroad, horse railroad, wagon, or any other means of conveyance;" and that a common carrier subject to the provisions of the Act to Regulate Commerce can "allow a division of rates *only to another* common carrier, which, participating in the particular traffic to which rate is applied, *is also subject to those provisions.*" Where both roads are common carriers, it is said "the two lines may by contract or agreement establish a joint rate from the point of origin on the one road to the point of destination on the other and agree between themselves as to divisions of the rate;" and, further, that, "treating the transportation, first of the log to the mill and then of the lumber to destination, as a through shipment, involves the *right to mill in transit*, and when that privilege is granted, the tariff should show on its face that the transportation covers carriage of the log to and the lumber from the mill and the division allowed the carrier of the log should be named in all cases."

The logging roads or "tap lines," to the owners of which the Mobile & Ohio road makes allowances out of the published rate from the mills to destinations, do not appear to be common carriers, or carriers for the public, subject to the provisions of the Act to Regulate Commerce but the private property of the mill owners used for haul-

ing logs to their mills. Those allowances are, therefore, unlawful under the rule laid down in the above decision.

The facts, that the roads west of the Mississippi make tap line allowances to mill owners in their territory and the defendants (with the exception of the Mobile & Ohio road) do not make such allowances to the mill owners in their territory east of the Mississippi, and that this results in placing the latter at a disadvantage in the common markets, does not constitute an undue preference for which the defendants in this case are liable under the Act to Regulate Commerce. The third section of that act, which prohibits undue preferences between individuals and localities, is not violated by the failure or refusal of the defendants to make tap line allowances to the mill owners in their territory while such allowances are granted the mill owners by other carriers in a different territory or section of the country. (*Central Yellow Pine Association vs. Vicksburg, Shreveport & Pacific R R. Co., supra.)* While, however, this is true, there does not appear to be any reason for making these allowances west of the Mississippi River, which does not equally apply east of the river, and if the rate west of the river is reasonable, minus the allowances, this is persuasive, or gives color to the proposition that after a similar reduction the rates east of the river would still be reasonably high. The Mobile & Ohio road by voluntarily making the allowance east of the river practically concedes this proposition as to itself.

10. The general rule is, the greater the tonnage of an article of traffic, the lower is the rate. No rule is more firmly grounded in reason or more universally recognized by carriers. It is because of the greater density of traffic north of the Ohio River in Central Freight Association territory and in Eastern Territory that rates in general are materially lower in those territories than in Southern Territory. The defendants have made yellow pine lumber an exception to this rule; while the *tonnage* in general of the defendants and lumber tonnage in particular have grown greatly, the lumber rate has not been lowered, but has been materially advanced. Moreover, the testimony is that "a decrease in the rates on traffic in general has been going on throughout the United States since the improvements in transportation have been put in operation;" here, again, lumber has been taken from under and deprived of the benefit of the general rule.

11. As said in *Marten vs. L. & N. R. R. Co.* (9 I. C. R. 589) and shown by proof in this case, "lumber is an inexpensive freight and only a few other commodities furnish to carriers so large a tonnage." The lumber business is constant, yielding the carriers revenue all the year; no special equipment is constructed or furnished for its carriage; it is loaded by the shipper and unloaded by the consignee, and where open cars are furnished, the shipper is required at considerable expense to equip them so as to protect the load and the train; there is small risk incident to its transportation, and, in case of

accident, the damage is insignificant. For these reasons lumber should be given rates which are relatively low.

Our conclusion on the whole is that the advance April 15, 1903, of 2 cents in the Cairo rate (with a corresponding increase in the rates of the other Ohio River crossings) was not warranted under all the facts in evidence, and that the resultant increased rate is unreasonable and unjust. An order will be issued in accordance with these views.

ABSTRACT OF TESTIMONY AND NOTES.

History of the Development of the Lumber Trade, Transportation and Rates.

In the testimony of Mr. I. C. Enochs, an intelligent gentleman, who has been in the lumber manufacturing business since 1872, the Court will find an exceedingly interesting account of the evolution or development of the interstate lumber trade, both east and west of the river, as well as the development of the transportation facilities of the Illinois Central Railroad and a history of the freight rates.

Vol. II, p. 147.

After the war the demand was purely local for rebuilding in Mississippi.

In 1875 there was a considerable uplift of business, and in 1877 and 1888 all lumber radically advanced, and with the advance there was such a demand for material, north of the Ohio, the mills could not supply it.

In 1877, 1878 and 1879 there was a good demand for car sills and car material and quite a number of mills became active, but they did no business except that which was special. They piled up a good deal of stuff. What is known as strips, sideboards, and an attempt was made by buyers of the car material to utilize it in the Northern trade, but it was a failure. They found it unprofitable, blue work and would not bear transportation charges, and did not suit the demands of their trade.

Some of the mills burned it, some sought to save it and some sold a slight percentage for local consumption.

It was a loss to the shipper, to the trade and to the railroad.

And out of that situation the railroads and the lumber manufacturers had to do something to take care of that by-product.

In the manufacture of structural material, part of the high grade stuff was lost because the sideboards and strips from which high grades of lumber are now obtained, were cut from the sides of the logs and all the tops of the logs were lost.

Ibid., 150.

The business of manufacturing the entire log for the Northern market was worked out during the decade from 1880 to 1890. It was a very faulty, evolving process worked out about the latter part of the decade.

Ibid., 150.

The methods of transportation were also a varying and evolving proposition. Lumber was handled upon an estimated weight basis. It was a long time before the roads put in scales and allowed the shippers to handle their business, except on an estimated weight basis.

Four pounds to the foot was taken as the weight, but this proved to be too low.

Asked to state the conditions of transportation in that period and up to 1893, in view of the declaration of the railroad people that they wanted to get back to the condition that transportation bore to the traffic, Mr. Enochs stated that in that period the cars in use were 8, 9 and 10 tons, most of the cars were 16,000 and 18,000 pounds, a few 20,000 pound cars. In 1877 and 1878 truss rods were put under the same cars and that permitted a shipment of 20,000 pounds on the 18,000 pound cars and 24,000 pounds on the 20,000 pound cars.

The roadbed and the railroad were about on a parity, iron rails, the old Crow rail. "We had a 60-inch gauge." The lumber was transferred either at Cairo or Columbus. A hoist was used at Cairo, the cars being transferred by boat and placed on other trucks, that is, the cars of the I. C. and the M. & O.

Thirty to thirty-five tons was the heaviest engine in use for freight.

In 1893 the average capacity of the cars of the Illinois Central was 50,032 pounds—*i. e.*, for box cars, 40,470, and of flat cars, 30,000.

In 1893, speaking of the traction power of the locomotives, Mr. Enochs did not think any of them weighed over forty-five to fifty tons.

In 1903, the year in which this advance was made, the average capacity of their flat cars was 66,360 pounds; of their box cars 58,300 and of their coal cars 66,640 pounds.

The increased capacity in flat cars has been 123 per cent.; in box cars, 47 per cent., and in coal cars, 33.2 per cent.

The locomotives will bear about the same average increase, except as to the flat cars.

Thinks they have some engines that weigh 100 tons. The Gulf & Ship Island bought some ninety-ton engines which they exchanged with the I. C. for lighter ones.

The roadbed of the I. C. has been improved so that it will take and carry the heavier equipment successfully during the last ten years.

Would say without hesitation that the average train load of the Illinois Central today (December, 1903) more than doubles what it was ten years ago.

With the same number of cars they can haul about twice as much tonnage.

Ibid., 152.

Speaking of the comparative conditions of the lumber trade west and east of the river and the adjustment of the rates in 1893, Mr. Enochs said the Arkansas people were ten or fifteen years ahead of us in the economical

and scientific utilization of the forest products or resources.

That was brought about partly by local conditions, partly by the people engaged in the business and partly by the treatment of their transportation companies.

Mr. Gould himself investigated the conditions, found what was necessary to move the forest products and installed the proper methods.

Ibid., p. 153.

Long prior to 1893 the Arkansas people were manufacturing and marketing the entire product of the log.

After the Cotton Belt road was completed to Cairo and the Arkansas shippers had found it possible to compete in the Kansas City territory with white pine, they began to extend their business into Illinois, basing as to Cairo, to which in 1893 and back of that they had a 13-cent rate.

On this side when the rates were based for shipments north of the Ohio River, taking Chicago as a basis, the rate was 27 cents on box cars and 30 cents on flat cars.

The 27-cent rate was applied on box car shipments wherever the Illinois Central lines reached. They took it out to Iowa and to Sioux City. The Illinois Central told "us" we could have a slight diminution to points in the interior of Illinois for planing mill product or box car product, but principally flooring and ceiling, but "we" told them we wanted a certain rate to a certain

point in order to get the business, and we got it worked down to 27, to 26 and 24, and finally to 20 cents.

In 1892, as the result of continued experimenting with the rate situation, the rate to Chicago was put at 22 cents and the differential on flat cars was abolished.

In the early part of 1893 the rates were advanced from 22 to 24 cents from east side points to Chicago, and were advanced from points on the New Orleans and Northeastern.

Cairo is the point at which the west side and east side mills have averaged their traffic, since 1893, for points north of the Ohio River, and was made the basing point.

When complaint was made to the railroad about the advance on this side they said they could not get the carriers on the other side to advance theirs. They insisted on a differential of 2 cents.

The traffic managers of the east side railroads and particularly the general freight agent of the Illinois Central thought that, if they should reduce their rate to 13 cents, the Arkansas lines would reduce theirs to 11 cents.

The reasons given were that conditions were different in Arkansas from those in Mississippi, which justified them in maintaining this differential.

The difference in the rate gave the Arkansas mills that much advantage in common markets.

The 13-cent rate was in effect prior to 1893.

It was the common rate as long as both sides used it, but the east side lines advanced theirs to 15 cents. When,

in 1894, they returned to the 13-cent rate it was common to both sides.

In 1899 (September 9) the rate was advanced both north and south of the river 1 cent, making the rate to the Cairo basing point 14 cents.

The fact that the Arkansas roads allowed a tap line division to their shippers (see stipulation on file in *re* tap line proof) came to light in 1894, Mr. Mobberly of Chicago calling the attention of witness to it.

Mr. Hudson (traffic manager of the I. C.) said the tap line proportion was in effect prior to 1894, before the readjustment of rates.

The Arkansas roads had practically a lower rate by means of the tap line divisions.

There was no change in the rates south of the river from 1899 (14 cents) until 1903.

Mr. Enochs testified also that while special cars are designed by the Illinois Central for various kinds of traffic, such as fruit and vegetables, live stock, coal, petroleum and furniture, no special equipment is provided for lumber.

He also produced the statistics of all tonnage handled by the railroads in the United States in 1901, the same which is printed in the findings of the Commission and showing that the lumber tonnage far exceeds any other traffic except coal.

Ibid., p. 162.

As to loading, he shows that the only reason why box cars of the eighty-ton type cannot be loaded to stenciled capacity is the lack of cubical space.

The 50,000 pound cars can easily be loaded to full capacity.

His own shipments for four months on open cars averaged 50,300 pounds, and for a year from another mill the average was nearly 50,000 pounds.

All his traffic practically is handled in coal cars.

The Illinois Central has only 2,581 flat cars, about 7 per cent. of its entire equipment.

Asked what he would say as to the claim of the railroads that the increase of rates was necessary because of the one-way haul of the cars used, Mr. Enochs replied that for the traffic originating on the Illinois Central (one of the oldest and best equipped roads in the South) it furnishes a very small percentage. "I don't think we use in our shipments more than 1 per cent. If the I. C. would never give us a single flat car we would not be hampered in the movement of our product."

Our cars come South loaded, as a rule, loaded with coal.

At this point there was read into the record the mileage of loaded and empty freight cars north or east and south in group 5 (the defendants' group), as follows:

Loaded north or east, 339,782,433; south, 393,793,919, or a difference of 54,111,476 loaded coming south.

Empty freight car mileage north or east, 178,438,142; south, 132,352,475, showing an excess of empties north over those moving south of 46,085,867.

This is taken from the report of the Commission for 1901, page 67.

Asked as to the advantage or disadvantage of special cars for special purposes, as bearing upon the transportation problem, Mr. Enochs said that would be found in the empty car mileage. It would be more conducive to a larger percentage of empty cars than a car designed for general purposes and capable of being used on the two-way haul.

A great many of the coal cars are so designed as not to be available for the alternate service because made with special hopper bottoms not fitted for lumber.

Treatment of Lumber Traffic.

Mr. Enochs shows that other traffic, such as cotton and coal, are given the preference. Has had coal cars, which he needed, taken from his side-tracks and hauled north empty for the movement of coal when he was ready to fill them on orders.

As to preference in movement, lumber is discriminated against in favor of nearly all traffic.

Ibid., p. 166.

The I. C. will run its cars by mills on its own line to be given to shippers on the G. & S. I.

Mills that use a greater percentage of gondolas (coal cars) ship structural material.

A very large percentage of coal cars, engines, cars for hauling ballast, bridge timbers, cement, etc., which were available for construction purposes, were taken out of their ordinary use by the I. C. and used in the last three years (1900, 1901 and 1903) in its construction work—double tracking its road.

The I. C. furnishes the G. & S. I. with cars for its lumber movement north.

Referring to Tap Lines.

Mr. Enochs thinks all the mills, owned by members of the Central Yellow Pine Association, have logging roads.

Tap line divisions had been allowed on the N. O. & N. E., but never on the I. C.

Ibid., p. 169.

Lumber Grades and Prices.

The Illinois Central paid the same price in 1902 as in 1901 for its lumber material.

The lumber produced in Mississippi divides itself into three grades, high, medium and low, about 1-3 per cent. of each.

The average of the low grades was $7.50 to $8.00. The rates on all grades were the same.

On all grades under the rate in force prior to April 15, 1903 the average freight rate was about equal to the value of the lumber at the mills.

As to the effect of the advance, Mr. Enochs stated that since they could not get the average cost of the low grades it increased the percentage of the unprofitable product and decreased the percentage of the profitable production.

When the advance was made the low grades were being marketed unprofitably north of the Ohio River.

The medium grade was being marketed on a small margin of profit. A 2 cents advance on the 14-cent rate was equal to 14 3-7 per cent. Add that to the advance of 1 cent made in 1899 and the raise amounts to 22 1-3 per cent.

Mr. Hudson (general traffic manager of the Illinois Central) informed the witness that ten years before his road hauled 64 per cent. of its cars out of New Orleans empty, and that now (December, 1903) they were having to haul cars into New Orleans empty to take care of the business offered.

Ibid., p. 173.

Advantages of Lumber as Freight.

Mr. Enochs testified that the following are, or should be, to the credit of lumber as a transportation product. (*a*) Value; (*b*) tonnage; (*c*) cost of handling; (*d*) constancy of the traffic; (*e*) as slow moving freight; (*f*) adaptability of all equipment to its movement; (*f*) indestructibility of material; (*g*) no damage claims; (*h*) no cars designed for lumber; (*i*) long haul loads; (*j*) full trains, thereby giving a distribution of rolling stock; (*k*)

freight mileage; (*l*) no station expenses, and (*m*) in open cars shipper makes equipment for transporting freight.

Mr. Enochs filed freight bills from 1890 to 1893, showing an 8-cent advance; 1890 to 1894, showing a 6-cent advance; 1892 to 1893, showing a 5 1-2-cent advance; 1893 to 1895, showing a 4-cent advance, and one in 1893, showing a 12 6-10 advance.

LOCAL DISTANCE TARIFF OF THE ILLINOIS CENTRAL.

The classification of freights is shown in six numeral items and twelve lettered items. In this classification lumber stands as the seventeenth item.

Beginning with five miles the first class is 20 cents and the last 3 cents. Lumber is 3 1-2, or next to the lowest.

The limit of the line south of the Ohio River is 550 miles, and this, which was made for Southern lines, shows the mean to be 125 per cent. above the lumber rates.

Ibid., p. 174.

(Refer to Enochs' Exhibit No. 21.)

The position and distance basis shown on this tariff, if traced back, will be found to be the same basis as was used for lumber in 1873, and the result of this distance table, applied to tariffs in effect reading Ashville, Ill., was that the present tariffs are higher by 2 1-2 cents than this distance table would create to Murfreesboro, and to a number of other points, the results will be shown by the tabulation.

Exhibit 21, Vol. II, p. 634.

Comparative Rates on Other Lumber.

Mr. Enochs produced tariff sheet of June 12, 1903, showing a rate on cypress from Natchez and Lutcher to St. Louis and East St. Louis of 12 and 13 cents, while the rate on yellow pine for corresponding distances from the interior, under the old rate, was 18 cents.

The distance from Lutcher to St. Louis is 723 miles. The bridge arbitrary leaves a net rate of 10 cents or $2.00 a ton. That gives a hauling revenue of 2.7 mills per ton per mile.

The rate from McComb City figured upon the same basis, 605 miles, gives a revenue of 5.9 mills per ton per mile.

The rate from Hanson City to Chicago, 913 miles, on cottonwood is 20 cents, or 4.38 mills per ton per mile, and from McComb City to Chicago, say 800 miles, the average of the yellow pine territory on the I. C., it is 26 cents, or 6.44 mills, per ton per mile, a difference of 47 per cent. against yellow pine. While the rate is named to Chicago, it applies to a great number of interior towns throughout Illinois and Indiana.

Cement Rates.

Mr. Enochs showed that the rate on cement from New Orleans to Chicago was 13 cents.

(Note—While Lutcher, Hanson City and Natchez are on the river, it was testified by Mr. Barnett, as well as

historically known, that part river competition to Chicago and the section north of the Ohio is not actual.)

Ibid., 195, *et seq.*

Mr. Enochs showed that if the advance of 14 2-7 per cent. made on lumber in 1903 had been applied to the total freight receipts of the I. C. for that year, they would have been increased $4,370,319.18.

Ibid., 178.

He also testified (Vol. II, p. 179) that lumber, as a transportation commodity, was very low down in classification; that the average receipts per ton per mile on all freight transported by the Illinois Central 1902-03 was 5.91 mills and on lumber 5.90 mills.

See Exhibit E, Enochs, *Ibid.*, p. 609.

The average paid by lumber after the advance was 6.8 mills per ton per mile. This is largely in excess of the mean average on all traffic.

In 1901 Mr. Enochs' output was 21,758,871 feet. The mill cost was $9.39 per thousand and the average selling price was $11.43, a difference of $20.04. In 1902-03 the output was 25,296,773 feet at an average cost of $10.93, and the selling average was $12.35, leaving the difference $1.42 per thousand.

Ibid., 181.

His company had a logging road thirty-one miles long to reach timber. It had recently sold a large body of timber at the rate of 2.25 per thousand because it paid

better than its manufacture. While the proposition was under advisement he saw the officials of the I. C. and endeavored to secure a tap line division for his logging road, but it was refused.

Ibid., p. 182.

To illustrate the deterioration in the value of sawmill property when the timber is exhausted, Mr. Enochs instanced the purchase of a mill standing the owner $148,000, at $20,000.

PERCENTAGE OF THE ILLINOIS CENTRAL IN DIVISION OF RATES WITH THE G. & S. I.

Using the average of 80 miles on the Gulf & Ship Island, and the actual mileage between Jackson and Cairo as between business originating on the G. & S. I. and reaching into Cairo, the percentage to the G. & S. I. is 260 per cent. above the I. C. (See Enochs' Exhibit E.)

Ibid., 609.

Mr. Enochs went to see Mr. Bowes (General Freight Agent of the I. C.) about the matter of tap line divisions allowed always in Arkansas and their being allowed by the N. O. & N. E.

Mr. Bowes said that as to the Arkansas situation they would not undertake to meet it; that, as to the lines on this side, they were going to stop it.

> "He simply said they did not have to do (allow) it and were not going to do it."

Ibid., 184.

OPINION AS TO REASONABLENESS OF RATE.

Mr. Enochs testified that he had given great attention to the rate question since 1871; was in the railroad business before he went into lumber, and had great experience afterwards; put in a whole year at its study in 1893-1894; has made it a consta[illegible] study.

Asked if, in his opinion, the a[illegible]nce of two cents was reasonable or unreasonable, he replied as follows:

> "If I did not think it was an unreasonable rate I would not be in this presence. Emphatically I say it is unreasonable." * * * "To the full amount;" that he thought unqualifiedly that the railroads' share before the advance was ample.
>
> *Ibid.*, 185.

Mr. Enochs also produced a large number of invoices of lumber shipped to Central Freight Association Territory, showing the small difference between the selling price and the freight paid. In many instances the latter exceeded the former.

Ibid., p. 185.

He also explained how light mileage respecting lumber shipments are. It being the carrier's fault in filling requisitions for cars, *e. g.*, their cars run from 28,000 to 80,000 pounds stenciled capacity, and their tariffs are made so as to accommodate the minimum carrying capacity of their equipment, and when a 40,000 or 60,000 car is called for by a shipper and a larger one furnished, it must go out on light mileage without fault of the shipper.

He added that no complaint of light loading had ever been made by the roads until this case started and that element of defense was introduced.

Ibid., 186-187.

The exhibits filed by Mr. Enochs are extensive and fully sustain his testimony in all things to which they relate.

His testimony has been extensively reproduced in this brief as he fairly represents the shippers' side of the controversy; is a man of perfect candor and appears to understand the entire problem involved as well as any traffic expert.

Mr. George S. Gardiner, a lumberman, who had become acquainted with the situation, supported Mr. Enochs fully.

He give a history of the so-called adjustment of rates between the Eastern lines in 1893 and the representations made against their reasonableness and justice by the lumber people. The representations were effective in the end, so that in the spring of 1894 a uniform blanket rate (so far as the published tariffs were concerned) was put in from this territory as well as from the west to Cairo, of 13 cents.

Vol. II, 8-15.

At that time the shippers on this side were insisting that a differential, then appearing in favor of west-side

mills, of 2 cents on the published rate, via Cairo, was not justifiable and that it was as important for the railroads as themselves to wipe it out because of the loss in the waste of the low grade product which could not enter the market.

The east-side people then knew nothing of the fact that not alone was there a rate lower by 2 cents west of the river, but that substantially it was at least 4 cents lower on account of the tap line allowances.

Ibid., 21-22.

Prior to the adjustment made effective in 1894 (April), at least 33 1-3 per cent. of the forest product in this territory was wasted, that is the low grade.

Afterwards all could be marketed and the same rate was applied to all grades.

Mr. Gardiner also speaks of the empty car movement, showing that practically all open cars coming South were loaded with coal or machinery.

He also confirms Mr. Enochs in the explanation given of the light loading, complained of for the first time.

Ibid., 30-32.

Also, that conditions respecting logging service east and west of the river are not dissimilar.

Ibid., 21-22.

Also, that the business of the railroads was handled under enormous difficulty in 1902-03, on account of congestion at Meridian, Jackson and elsewhere.

Ibid., 30.

It will be seen that Mr. Gardiner's study of the lumber traffic and freight question had been deep and extended.

Asked his opinion of the reasonableness of the rate in effect prior to April 15, 1903, and his reasons, he replied that the prior rate was reasonable and the advance unreasonable. One reason was that the railroad people themselves were mistaken in their statement that they needed the advance on account of the decrease in their net earnings, because an investigation of their net earnings in their annual statements, ending June 30, 1903, showed larger net earnings than in their previous history.

It does not or should not cost any more to haul lumber from representative points in Mississippi than from Arkansas and Louisiana (west of the river); that the charge made from points west of the river, distances substantially the same, is anywhere from 2 to 5 cents less than from this territory. The same is true on the Mobile & Ohio where the rate to Cairo is 2 to 3 1-2 cents lower (referring to the tap line allowance to logging roads).

Ibid., 35.

He then gives the percentage of increase in the net earnings of the Illinois Central and other roads.

In 1896 the net income of the I. C., applicable to dividends or for use in betterments, was $3,085,724; in 1897, $2,778,551; in 1898, $4,388,655; in 1899, $4,331,502; in 1900, $5,657,274; in 1901, $6,967,660; in 1902, $9,790,461; in 1903, $10,729,392.

The other lines showing practically the same increase.

The Southern, from $600,000 in 1896 to $4,130,141 in 1903.

The Gulf & Ship Island, $274,770 in 1902 and $473,717 in 1903.

Mr. Gardiner said he took those figures to prove there was no reason for supposing it was necessary to advance the lumber rate to meet the increased expense of operation and pay fixed charges.

Ibid., 36-37.

Mr. Butterfield (Vol. II, Record, 144) is a very large shipper on the I. C. He confirms the statement of Messrs. Enochs and Gardiner as to reasons for light loading, when that occurs. It is due to cars being supplied above the capacity named in the requisition.

His company owns a logging road twenty-five miles long over which it hauls its logs, also hauls in lumber from another mill, and the I. C. refuses any allowance either on the logs or lumber.

Ibid., 142.

The advance in the rate cut him out of a considerable amount of business in Minnesota.

Mr. A. F. Barnett, a witness for complainant, testified that he had been in the railroad business since 1879. Was general freight agent of the Queen & Crescent system at New Orleans. It was composed of the Cincinnati Southern, Allabama Great Southern, New Orleans and Northeastern, Alabama & Vicksburg and Vicksburg, Shreveport and Pacific.

Was general freight agent of the N. O. & N. E. when the 13-cent rate was in effect. That was the rate when he took charge.

The intermediate road to Cairo, handling lumber beyond Meridian, was the Mobile & Ohio, principally. So far as the N. O. & N. E. was concerned, the 13-cent rate was deemed reasonable and Mr. Barnett never heard of any complaint by the intermediate roads.

Asked, from his point of view, as a traffic man, what he would say as to the reasonableness of that rate (13 cents), all conditions considered, Mr. Barnett replied:

> "Considering the character of the traffic and the cheapness of the transportation, as compared with the transportation of other traffic, I would consider it a fairly reasonable rate."
>
> *Ibid.*, 196.

He said lumber had always been considered a very desirable traffic by railroads for the reasons: (*a*) That the shipper loads, (*b*) it moves most largely, if not altogether, by local freight trains, (*c*) its liability to injury in case of wrecks is at a minimum, and (*d*) practically any kind of car can be used in its transportation.

The advance from 13 cents to 14 cents would largely compensate the road to offset the additional expense of operation from increase in wages, etc.

The concessions to employees were demanded by them because of the understanding of that class of people that the roads were prospering and could afford to make them.

Ibid., 197.

While traffic man of the Q. & C. the matter of tap line allowances west of the river was brought to Mr. Barnett's attention and he attempted to equalize the freight rate for his patrons by adopting the same practice; that was, to allow mills operating logging roads a proportion of 2 cents per hundred pounds.

Ibid., 197, 198.

This was pro-rated with connections.

That allowance raised a "howl" on the part of lumber-carrying roads which made no such concessions.

It was discontinued in January, 1898.

In the meantime the mills had gotten into a better condition.

In that time the preponderance of the movement of empty cars was north-bound, although during the busy season, October to March, it became necessary for the N. O. & N. E. to bring empties to New Orleans to take care of its business.

The percentage of the lumber traffic of that road was very considerable.

Ibid., 199.

The cost of moving a train (with incidental expenses) of 20 cars or 400 tons of lumber from McComb City to Chicago should be $984, in the witness' understanding should be 3 mills per ton per mile. At 26 cents or $5.20 per ton the revenue would be $2,080, distance 821 miles.

Mr. Barnett knows of no other traffic in this territory, of any volume, which pays better.

Ibid., 199.

Mr. Barnett filed a table (Barnett Exhibit No. 1, pp. 682-83) giving the rates from New Orleans on the I. C., Q. & C. (N. O. & N. E.), and L. & N. to fourteen representative points, on coffee, sugar, rice, molasses, cement, salt, rosin and turpentine, lumber and tropical fruits, also the value of each item, the freight per ton per mile and the distances. Only rosin, turpentine and tropical fruits take a higher rate to Chicago and many other points.

Lumber has the lowest value of any, except salt.

He also testified that there is practically no water competition from New Orleans.

Ibid., 200.

Exhibit No. 2 (pages 684 and 685) to Mr. Barnett's testimony gives comparative rates on lumber to and from different sections, distance, rate per ton, and rate per ton per mile, from which it appears there are many rates as low or lower than those in question.

Mr. C. W. Robinson, who has been a civil engineer and now a lumber manufacturer, after testifying (Commission Record, 56) to a decline in the price of lumber following the advance, when asked if he was prepared to give his views respecting the reasonableness or unreasonableness of the advance complained of, said the railroad people were mistaken when they thought they needed any increase in rates whatever; that their reports and especially those of the older and better managed roads showed that they were earning not only a fair compensation on the

cost of their properties, but an abnormally large percentage on such cost, and that in spite of the fact that they were operating under congested conditions in that they were unable to handle the traffic they attempted to handle.

During 1902, at Meridian, the M. & O. was unable for some time, eight or ten weeks, to receive the traffic offered it. He instances the shipment of one car requiring 77 days to be taken 150 miles, due to congested conditions at Meridian.

At Jackson, Miss., the congestion was so great as almost to surpass belief, and notably so at Memphis, Tenn. Perishable freight, because of this congestion, spoiled and was paid for by the roads.

The railroad managements were shortsighted and did not provide sufficient motive power, sufficient cars, sufficient yard room at junction points, sufficient side-tracks along their lines, and sufficient terminal facilities at the great distribution centers to earn what they would have earned on the old rate if those facilities had been provided.

If they had been able to furnish the cars the business required at the old rate, their earnings would have been enormously increased. On the G. & S. I., not exceeding fifty per cent. of the cars demanded by the business was furnished.

Ibid., 57-58.

In spite of these congested conditions of these roads, enormous profits were realized in their business.

Commission Record, p. 58.

Mr. Robinson also stated that the roads were doing all that the money available would allow them to do in improving their conditions and extending their facilities to take care of business; are diverting large amounts from their current earnings, charging the same to operating expenses. As an illustration, he found from the report of the Illinois Central, from 1901 to 1905, inclusive, it had spent from its current earnings, charged to operating expenses, something over $12,000,000. Bearing on the question of congested conditions he quotes a paragraph from the 9th (June 30, 1903) Annual Reports of the Southern Railway.

> "While the increase in gross earnings is large, it could have been exceeded, if equipment, yard and shop facilities had been equal to the demands upon them, and the net results would have been much improved if the transportation had been done under normal instead of under congested conditions. It is confidently believed that with the improvements now in progress, much better operative results will be obtained."
>
> Vol. II, p. 59.

Mr. Robinson adds:

> "You had as well compare these roads, handicapped as they were, as every railroad in this country knows they were, with a prosperous, well managed road, able to take care of all its business; and then for these roads, that were thus badly mismanaged, in that they were allowed to congest, to say, because of this short-sightedness, because of the poor management, if you please, perhaps on the part of the

men who should have furnished the money, we must increase the rates in order that we may increase our net earnings, over what we have previously earned, is unjustifiable."

Ibid., p. 57.

Speaking of dividends paid by the Illinois Central in 1901-02 and 1903, as shown by its reports, Mr. Robinson stated that in 1901 it was 5 1-2 per cent., in 1902, 6 per cent., and in 1903, 6 per cent.

Ibid., p. 60.

(Note.—In 1904 and 1905 it was 7 per cent. See I. C. Reports on file.)

Mr. Robinson was familiar with the creation, organization and construction of the N. O. & N. E. road, which is 196 miles long, and his understanding is that it was built for $5,000,000 in round numbers.

Ibid., p. 62.

The Chicago, St. Louis & New Orleans R. R. Co. is held by the I. C. under a 400 year lease from 1882, and it pays 4 per cent. annually upon the stock of that corporation.

Under those leases the stock of the C., St. L. & N. O. R. R. Co., was fixed at $10,000,000.

The 4 per cent. dividend paid on this leased line stock was deducted from the earnings of the I. C. In a sense this 4 per cent. is an additional dividend on the stock capitalization of the Illinois Central.

These liberal extracts are made from the testimony of Messrs. Enochs, Gardiner, Barnett and Robinson, be-

cause they furnish, in themselves, a reply to much that is said on behalf of the railroads regarding the reasonableness of the rate involved, and tend to support the findings and conclusions of the Interstate Commerce Commission above quoted.

There was much additional testimony before the commission regarding the loading and equipment of cars; the expense attending the latter operation; the use of the cars furnished for coal southbound, etc., as well as to the matter of "tap lines."

See Butterfield, Vol. II, p. 142; H. A. Camp, p. 139; S. J. Carpenter, p. 109; J. H. Hinton, p. 127; A. H. Stevens, p. 132, and J. J. White, p. 123.

Also the annual reports of the various railroads were in evidence, confirming all statements made relating to their gross and net earnings, dividends declared, and expenditures out of receipts from operation for permanent improvements and betterments. None of these are in dispute.

Respecting the desirability of the lumber traffic, the deposition of Mr. A. S. Johnson was taken (Vol. II, p. 576), and by him it was proved that he and associates, in August, 1898, contemplated the building of a railroad from Meridian to a branch of the Illinois Central Railroad in Mississippi, and, expecting to handle lumber tonnage, they called on Harrahan (Vice-President and General Manager of the I. C.), to see what aid could be procured from his road toward the new enterprise.

In the course of this interview Mr. Harrahan was asked if his road would allow the new line an arbitrary of 6 cents per 100 lbs. on lumber. Mr. Harahan then called in Mr. Hudson, traffic manager of the company, and asked him if the company could afford to pay that arbitrary and make money out of the business. To that Mr. Harrahan replied that it could. (Note—The 13-cent rate was then in effect.)

Ibid., pp. 576, 577.

THE CHARGE OF CONSPIRACY.

Proof of the agreement or concurrence of all the roads in this advance, as found by the Commission, is disclosed in the testimony of M. P. Washburn, chairman of the Southeastern Mississippi Valley Association, then embracing all the defendants, except the Gulf & Ship Island, which has since joined.

Vol. II, 112-122.

And documents, minutes, telegrams and correspondence produced and filed by him. (688-810.)

The subject was originated by a letter dated January 2nd., 1903, from T. C. Powell, Freight Traffic Manager of the Southern, which letter reads as follows:

> "DEAR SIR—Rate Adjustment: Rates on lumber from Southern points to Ohio and Mississippi river crossings.
>
> "The rates on lumber and pig iron have generally been adjusted with relation to the price of the commodity.

"We have advanced the rates on pig iron and we are contemplating a second advance in the early part of this year, and which I believe will not be opposed by Southern furnaces. A second advance has already been made from Virginia furnaces.

"The rates on lumber, however, are still much lower than they were about twelve years ago, while we are told that the profits are quite liberal.

"The present car shortage and lack of motive power has induced shippers to say to us that they would be willing to pay higher rates if an ample supply of cars and quicker service can be maintained.

"Only three days ago a party called to see me in Washington, offering to pay an advance over the present rate if we would furnish cars to one of our connections to, or placed at, a point about forty miles from our junction. We could not supply the cars, and, in any case, I do not believe we could legally have charged more than the published rate.

"At the present time, the basing point from the south to Cairo is 7 cents less than the basing rate to Cincinnati. I believe that this differential cannot be reduced and that all lines east of the Mississippi river can afford to advance the basing rate to Cairo 2 cents per 100 pounds.

"This will advance a great many through rates to Central Freight Association territory, but will not advance the rates to Pittsburg territory, which is accessible *via* the Atlantic Seaboard, and, therefore, is subject to indirect water competition.

"Do you see any objection to advancing the basing rate in Cairo 2 cents per 100 pounds? This will make Cairo 17 (16 cents) and Cincinnati 22 cents from points on and south of a line drawn from Vicksburg, Miss., through Jackson and Meridian, Miss., Selma and Montgomery, Ala., to Savannah, Ga.

"My suggestion would be that the advance in the rate be taken up from the *pro-rating point*, inasmuch as the differentials now allowed the initial lines are quite generous.

(Signed) "T. C. POWELL,
"Freight Traffic Manager."

See also testimony of C. C. Cameron, General Freight Agent of the Illinois Central, referring to this correspondence, and with Parrott, chairman of the Southeastern Freight Association (the Georgia lines), Vol. II, 373-375.

Mr. Cameron admitted that it was generally understood that no advance would be made east of the river, unless an advance was made west.

Ibid., 375.

Much testimony was introduced by the railroads relating to the history of the rates, the rates per ton per mile; the movement of flat, open and box cars; the expense of operation, increase of and comparative rates in other territory on lumber and rates on other articles, and the value of lumber, and in relation to the conspiracy charged.

Mr. Haiden Miller, General Freight Agent of the Mobile & Ohio, which he understands is owned and controlled by the Southern Railway (Vol. II, p. 393), for instance, states that the average rate per ton per mile for lumber on the M. & O.'s own line is 6 1-2 mills and its average is only 4 mills, taking in divisions paid to connections. Comparing other rates, he gives the rate per ton per mile on bananas, 1.58 mills; on cotton, 1.54; dry goods, 2.27; walnut, mahogany and cherry lumber, 8 1-2, and

canned goods, 9.7. He does not give values, and leaves out coal, cement and the like. He admits allowances of 3 cents, 3 1-2 and 3 3-5 cents per 100 lbs. to certain shippers on his line having logging roads ten miles and less and over ten miles in length.

With reference to the use of flat cars on the Mobile & Ohio, alleged to be 65 per cent., Mr. Miller stated that rough lumber generally was shipped over his road and flat cars were required for it. His road still had more box cars available, and, as a rule, they come south loaded and it was naturally to the interest of his road to furnish flat cars for the movement of lumber.

Vol. II, pp. 384-385.

He figures his rate from Mobile to Cairo at a fraction over six mills per ton per mile average on the 14 cent rate.

Ibid., pp. 386-387.

His road allows one connection at Mobile 5 cents per 100 lbs. (386.)

Mr. L. Green, Assistant General Freight Agent of the Southern Railway, after testifying that the action of the Southern Railway respecting the advance was absolutely independent (Com. Record, 206), admits an effort to make an advance on the part of all the roads; that the meeting was held, the views of each line was ascertained, found to be in accord, and then each proceeded to make the advance.

Ibid., p. 232.

Mr. Green filed a statement showing an alleged result to the Southern Railway of the transportation of 674 carloads of yellow pine lumber by its lines to Ohio river crossings, and testified that the net to the Southern was 4 mills per ton per mile; but was not prepared to state what rate per ton per mile was paid by the shipper for the entire carriage. Thought it safe to say, however, he paid about 6 mills—was not prepared to say what division the initial carrier received.

Ibid., pp. 234-235.

He does not give the distance of the several hauls. But the cars were taken principally from Georgia, Florida and Alabama points.

Ibid., p. 235.

He agreed that the distance in that territory was greater than from Meridian or Hattiesburg to Cairo, where lumber would be taken by the M. & O., controlled by the Southern. The average distance of the Southern's line from Hattiesburg to Cairo is only 442 miles.

Ibid., p. 237.

The rate per ton per mile for this average, Mr. Green thought, was about seven mills.

He admits that while the average distance from Georgia points to Cairo is 695 miles, or one-third greater than from Mississippi by his lines, the rate is the same, the adjustment having been made to meet commercial conditions.

Yet he says the rate from Mississippi is as low, or lower, than from other sections of the country, distance and all other things considered, with specific exceptions.

Ibid., p. 238.

Mr. Green also, in support of this latter statement, produced his Exhibit No. 10 (*Ib.*, p. 903) for a comparison of rates on yellow pine lumber from South Mississippi points with rates on lumber from other sections of the United States.

Mr. Green was asked this question:

> "Do those rates apply to places where there is an actual movement, or a movement to any extent?"

And he answered:

> "They apply to points where the rates on lumber are published, and I presume they don't publish rates on lumber unless there is a movement. Certainly as to many of the points there is an actual movement."

Mr. C. B. Compton, Traffic Manager of the Louisville & Nashville (Vol. II, pp. 265 *et seq.*), testified at length, and, after the usual denial of prearrangement and concerted action regarding the advance, produced tables showing rates on pig iron from producing points in Alabama and Tennessee to Ohio river crossings and beyond (*Ib.*, p. 862.); also a table showing prices of yellow pine at, and freight rate via lines to, Chicago, years 1891 to 1902

(*Ib.*, pp. 863-865). This table shows rate in 1891 was 25 cents per 100 lbs. in box cars, and 28 cents on flat cars; same 1892 and first half of 1893; last half of 1893, 24 and 27 cents; 1894, 24 and 27 cents first quarter, and 22 and 25 cents for the rest of the year; 1895, 22 and 25 cents; 1896, 22 and 25 cents; first quarter 22 and 25 cents, and the rest of the year 22 cents irrespective of car; in 1898 and first, second and third quarters of 1899 rate 22 cents, and for the fourth quarter of 1899 it was 23 cents; in the entire years 1901 and 1902, the rate was 24 cents, and so on until the third quarter of 1903, when it became 26 cents.

Ibid., pp. 863, 964, 865.

Other tables offered by Mr. Compton show rates on fir lumber from Pacific coast points, with an average of 4.65 mills per ton per mile; from points in Michigan (white pine), with an average rate, as figured, of 7.8 mills per ton per mile; from points in Minnesota and Wisconsin, rates running from 5.0 mills per ton per mile to 8.6 with an average of 6.03 mills per ton per mile, *e. g.*, Fon du Lac to Chicago, 458 miles, rate 12 cents, rate per ton per mile 5.2. The highest rate, 8.6, being for the shortest distance, 197 miles.

Ibid., pp. 866, 867, 868.

From Ohio river crossings to Central Freight Association territory: Chicago, average rate per ton per mile, 6.55 mills, the greatest distance being 365 miles, and the rate .55 mills per ton per mile.

Detroit, Mich., average per ton per mile, 5.96. The greatest distance being 541 miles, and the rate on that, .52 mills per ton per mile.

Cleveland, Ohio, average, 6.48; greatest distance 559 miles, and the rate, .54 mills per ton per mile on a 15 cents basis.

Indianapolis, average, 9.34; greatest distance 276 miles on a rate of .65 mills per ton per mile.

Pittsburg, average, .553 mills per ton per mile; greatest distance 649 miles on an 18 cents rate, with an average of .55 mills per ton per mile.

Ibid., p. 869.

His other tables show: Prices of yellow pine lumber, of bridge material (pages 870, 871). Movement of yellow pine lumber by the L. & N., with percentage of loading. The average loading of 649 cars, box, gondolas and flats, being 69 per cent.; box and flats being the highest and "gonds" the lowest.

Ibid., p. 871.

Mr. Compton's next table professes to show the proportions accruing to the Louisville & Nashville south of the Ohio river crossings; Cairo to Cincinnati, inclusive, in division of lumber rates, from certain stations named on its line to 32 points named north of the Ohio river. The table gives the through rates; the distance to the Ohio river crossings; the rate per ton per mile and the average.

The originating points taken are, D'Olive, Eleanor, Manistee and Lookout. The lowest rate per ton per mile, out of the division of the through rate, is put at 3.82 mills, and the highset, 5.23; the average being figured at 4.81 mills per ton per mile.

Ibid., p. 872.

The average through rate to same points is put at 5.92 mills per ton per mile, and the average mileage at 903 miles. His Cairo rate from all four points named is 22 cents, or 6.31 mills per ton per mile, according to the table.

Ibid., pp. 873-874.

Another table of lumber rates and distances is given by him from points in Georgia to points in States beyond the Ohio river as far as New York, with an average mileage not figured, but an average rate per ton per mile of 6.37 mills by the short line, and rate per ton per mile to the L. & N. of 5.23 mills.

Ibid., p. 874.

Other tables of rates from points in Georgia and Florida give average by short line of 6.23 mills per ton per mile, and via L. & N. of 8.53.

And from Florida points, with an average rate of 6.21 mills per ton per mile, and 5.72 mills per ton per mile to the L. & N.

Ibid.

Another table giving distance, rate and rate per ton per mile, from two named points in Mississippi, one in

Missouri, and one in Louisiana, to thirty-eight named points in Illinois, Wisconsin, Indiana, Michigan, Ohio, Pennsylvania, New York, Kentucky and Missouri, the average mileage beig put at 885 miles and the average rate at 6.21 mills per ton per mile.

The points selected for Louisiana are, Hanson City (10 miles from New Orleans), and Kentwood, on the I. C.; Carriere, Miss., on the N. O. & N. E. (near the southern end of the line in Mississippi), and Hattiesurg, Miss. The average rate per ton per mile thus produced to Chicago, for example, is 6.07 mills. The average per ton per mile to Cairo is 6.50.

Exhibit M, Compton, pp. 875-876.

Compton, Exhibit N (C. R., p. 877), is a compilation by him of lumber rates from a named point in Arkansas, one in Louisiana, and one in Texas, to named points as far east as Buffalo and Pittsburg, producing an average of 6.59 mills, the lowest being 5.03, and the highest 8.10.

Ibid., p. 877.

Compton, Exhibit O, is a table of rates from Shreveport, La., by the T. & P., to five named points in Missouri, Kansas and Nebraska, with an average mileage of 624 miles, and an average rate of 7.37 mills per ton per mile.

Exhibit P, gives rates from Shreveport, La., to points in New Mexico and Colorado, with an average distance of 837 miles, and an average rate per ton per mile of 8.31 mills.

Ibid., p. 879.

Compton's Exhibit Q is a statement showing the proportions (regular local tariff rates) according to lines north of Ohio river crossings, Cairo to Cincinnati, inclusive, in divisions of the lumber rates; the average mileage is figured at 317 miles, the average rate, 10.9, and the average rate per ton per mile at 6.91 miles.

The rate from Cairo to Chicago, 365 miles, is put at 5.48 mills per ton per mile. To Indianapolis, 276 miles, at 5.07 mills; to Columbus, O., 457 miles, the rate is 13 cents from Cairo, or 5.69 mills per ton per mile. The average mileage from Cairo to the thirty-two points named in this table is placed at 416 miles, the average rate, 10.69 cents, and the average rate per ton per mile, 5.77 mills.

Ibid., p. 880.

(Note—The average distance from points in the central yellow pine district to Cairo is practically the same (445 miles), the rate on the 16 cent basis is 7 and a fraction mills per ton per mile, and, with the bridge arbitrary off, is 6.2 mills per ton per mile.)

Compton, Exhibit R, is a table giving rates on lumber from Michigan and Wisconsin to points named in Missouri, Kansas, Nebraska and Colorado.

The average rate from the points named to Kansas City, Mo., is 23 cents, and the average distance, 788 miles, and the average rate per ton per mile, 5.8 mills, from which figure it runs up to 5.1 mills, an average rate of 35 cents to Grand Island, Neb., with an average dis-

tance of 767 miles. The average mileage of the entire table being 808 miles, the average rate, 28.6 cents, and the average rate per ton per mile, 7.1 mills.

(Note—The movement on these rates is presumably of light white pine.)

Ibid., p. 882.

Compton, Exhibit S, gives rates on lumber from certain named points in Ohio, Indiana and Illinois, to New York. The average distance is stated at 911 miles, and the average rate per ton per mile, 5.6 mills.

(Note—The most analogous point named in the table to a shipment from McComb City to Chicago (821 miles) is from Goshen, Ind. (805 miles), from which the rate to New York is put at 24 cents or 5.9 mills per ton per mile against 6.2 from McComb City, or Laurel, to Chicago.)

Ibid., p. 883.

Compton, Exhibit U, gives a history in tabular form of the rates from named points in Georgia and Florida to Ohio river crossings, from 1888 to 1903 (C. R., p. 886), the highest rate to Cairo, for points beyond, 25 cents on box cars and 28 cents on flat cars in 1890, and the lowest 13 cents in 1897 with the flat car differential abolished.

(Note—There was little movement of yellow pine, except for structural timbers in 1890, and in 1894, when the 13 cent rate was first put in on this side, the movement had become large.)

The average rate per ton per mile is not figured on this table.

Compton, Exhibit V (p. 892), is a comparison of lumber rates from certain points in Georgia and Florida to Chicago and Indianapolis, running back to 1887, with the flat car differential, and coming down to the present time. The average of the old rate being stated at 31.5 cents to Chicago, and 28.5 to Indianapolis, and the average of the new at 27 cents to Chicago, and 26 cents to Indianapolis.

(Note—This table does not appear to have been based on Cairo, nor to relate to the territory involved in this case.)

Mr. Compton also filed a table showing movement of yellow pine lumber by the L. & N., from 1888 (2,500 cars) to 1902, inclusive (7,011 cars), and 9 months of 1903 (6,502 cars); average rate in 1888 being 32 1-2 cents; in 1895, 23 1-2 cents. Destinations not given.

Ibid., p. 896.

Compton, Exhibit Y (p. 897), purports to be a comparison of rates from points on L. & N. stations, south of Montgomery, Southeastern Territory, Mississippi and Louisiana and Arkansas to 39 points of destination on and north of the Ohio river and on the east of the Mississippi river.

(Note—While the rates shown on this table are in some instances higher from Arkansas than from other points,

it will be observed that the rate to Cairo (beyond) the basing point is the same in all.)

Mr. Compton was asked what was the lowest rate per ton per mile he, as a traffic man, would consider it safe to accept for the transportation of any commodity over his road, and replied that he did not believe he could answer the question.

Asked what he had to say of Mr. Barnett's statement that he had been taught that 3 mills per ton per mile would cover operating expenses, etc., he replied as follows: "Well, I suppose he felt justified in making that statement. I am not competent to make a statement on the matter at all."

Ibid., p. 313.

Having stated that the average received by the L. & N. for its proportion of the through rate on yellow pine lumber to points north of the Ohio river was 4.81 mills per ton per mile, Mr. Compton was asked to say if he should take the average earnings on its transportation in the aggregate, whether he could give the rate per ton per mile, and replied that he had no such average. That he could not give the average rate per ton per mile on all the business, and did not think it would be possible to work up a statement that would show that.

Ibid., p. 311.

Mr. Compton gave the rate from Alabama points to Chicago between August 5, 1899, and July 16, 1893, at

25 cents on box cars and 28 cents on flat cars, and figured the average rate then in force, from such points to Chicago, at 26 1-2 cents per hundred pounds.

He produced that result by adding 25 and 28 and dividing by 2.

The claim was that the existing rate was still less than the rate then in effect (1889).

Mr. Commissioner Prouty exposed the fallacy of his calculation, to establish this average, when he inquired of Mr. Compton what the average would have been if only 10 or 15 per cent. of the movement had been in flat cars.

Ibid., 272, 273 and 274.

Mr. Steele, general freight agent of the N. O. & N. E., Alabama & Vicksburg, and V., S. & P., after saying he was familiar with the lumber traffic on those lines, was asked whether the lumber handled by them was or not as profitable as the average of other business handled by them, and made this answer:

"It does not yield as much per ton per mile as the other business handled;" thus leaving unanswered the essential part of the question.

Vol. II., p. 415.

Mr. C. C. Cameron, (chairman of the meeting of the Southeastern Mississippi Valley Association, held in St. Louis, and assistant general freight agent of the Illinois Central), was asked whether he or the representatives of

the other roads knew when the Arkansas roads came into line on this advance, that substantially the rate quoted from Arkansas was not the rate represented by the published tariff of those roads, owing to the tap line divisions allowed the owners of logging roads on their lines.

He replied as follows:

> "I do not understand that the published tariff rates were not collected; in fact, I understood to the contrary, that they were and are collected. I knew indirectly of the tap line divisions in a general way, *not specifically as to what they were with the different mills.*" (Italics mine.)
>
> *Ibid.*, p. 377.

He added that the Illinois Central had not allowed tap lines, and has been opposed to the idea of allowing them.

The Illinois Central collects the same freight on lumber from the Arkansas roads as that received by the roads on this side, that is to say, its full local.

Ibid., p. 378.

Mr. Cameron also testified (*Ibid.*, p. 476) that the rates of the Illinois Central on this lumber, and all other traffic, are made by its officers exclusively.

This in answer to a question reading: "Are the rates charged by the Illinois Central railroad on this lumber made by its own officers, or made by agreement with competing lines?"

Yet, on page 693, will be found this correspondence by wire between this witness, who was chairman of the St.

Louis meeting, and S. F. Parrott, of Atlanta, chairman of the Southeastern Freight Association (the Georgia roads and including the Southern and L. & N.):

"ATLANTA, GA., February 3, 1903.

"C. C. CAMERON,

"Louisville, Ky.:

"Referring to telegram this date, following traffic officials here to-day, Winburn, Emerson, Capps, Niel and Cutter, suggest revised lumber rates be made effective March 1st. Was any date named in St. Louis announcements on which revised lumber rates would be made effective?

(Signed) "S. F. PARROTT."

"ATLANTA, GA., February 3, 1903.

"C. C. CAMERON,

"Louisville, Ky.:

"Your wire yesterday, B2. Were announcements made at St. Louis meeting, January 30th, by initial lines in this territory? In other words, will it be necessary for lumber originating lines in this territory to discuss or interchange views regarding matter? Will communicate the information promptly to members.

(Signed) "S. F. PARROTT."

"LOUISVILLE, KY., February 3, 1903.

"S. F. PARROTT,

"Atlanta, Ga.:

"Your two wires to-day regarding advance in lumber rates. Action of St. Louis meeting, taken in connection with meetings previously held at St. Augustine and New Orleans, was final, and unnecessary for you to submit matter to your members for further expression of their views. My wire yesterday should have stated that March 1st was fixed as the

date new rates would be made effective, and will be obliged if you will communicate this to your members promptly. (B2.)

(Signed) "C. C. CAMERON."

And this telegram:

"FEBRUARY 9, 1903.

"L. SEVIER,

"*Birmingham, Ala.:*

"Your letter 7th, file A. At meeting Southern Hotel, St. Louis, January 30th, *understanding was reached* that rate to all points east of the Mississippi River, north of Ohio River and west of Western termini trunk lines would be made on lowest combination. This had specific reference to Mount Vernon, Michigan City and Detroit, which points are to be advanced to combination basis.

(Signed) "C. C. CAMERON."

Mr. T. F. Steele (general freight agent of the N. O. & N. E., A. & &V., and V., S. & P), in rebuttal of complainant's testimony that the freight rate on lumber about equaled its value at the mills, testified that it would depend on the destination and on the character of the lumber. Would say the average would be a little less than the value.

In reply to the question how the rates on lumber charged on his roads compared with the average rates per ton per mile on coal and pig-iron, he replied that "the average rates on lumber are in some cases higher, but on the average they are lower than the rates on other commodities." (Vol. II., p. 417.)

In support of this statement he produced a table of comparisons. *(Ib.,* pp. 928, 929.) But, in respect to lumber, he only gives the proportion accruing to one of his roads (the V., S. & P.) on lumber destined to Ohio River points and beyond originating on Tremont & Gulf Road, without any showing of distance or rate per ton per mile.

His Exhibit No. 1 gives rate on rosin to Chicago from points on the N. O. & N. E. at 25 cents per hundred pounds, and the rate per ton per mile, 6.1 mills.

His rate on lumber to Chicago is 26 cents from points on the N. O. & N. E.

Rosin was then worth about $13.50 per ton, while lumber was worth $6 rough, or $8 per ton dried. (Barnett, p. 682.)

The rate on turpentine to Chicago is 9.7 mills per ton per mile, but turpentine was worth $49.95 per ton.

Ibid., p. 682.

His rate per ton per mile on coal runs from 3.6 mills per ton per mile up to 8.8 mills, depending upon destination. His average on coal is 6.8 mills per ton per mile, but was as low as 3.6. What is the average on the actual tonnage is not stated.

Ibid., p. 929.

His rate per ton per mile on pig-iron runs from .6 mills up to 12, according to destination. Rate per ton per mile on cottonseed meal runs from 6.8 mills to 18.1, according to distance. The usual freight appears to be $2 per ton; only from two points given is it higher—viz., Vicksburg, $3.80, and Hattiesburg, $3.00.

(NOTE—Cottonseed meal was then worth some $24 per ton, according to market reports.)

(NOTE—Nothing is said of the extent of the movement of the commodities mentioned other than lumber.)

Mr. Steele produced a statement showing the movement of lumber over the N. O. & N. E. for ten months in 1902, 10,489 cars, and for the same period in 1903, 10,636 cars, destined to Central Freight Association territory; and a decline for the same period over the A. & V. Railway, 1,552 cars to 1,144. Mr. Steele said not exceeding thirty per cent. of the lumber originating on his lines moved in flat cars.

Ib., p. 420.

Mr. Steele also stated that the advance was made by his lines independently, and not under agreement with other lines.

Vol. II., p. 419.

Yet, while his assistant general freight agent (Mr. Grant), who represented his lines, withheld the "views" of the N. O. & N. E. at the St. Louis meeting, January 30, 1903, Mr. Steele himself made haste to send the following telegram, dated New Orleans, February 2, 1903:

"C. C. CAMERON,

"Louisville, Ky.:

"Our line will agree to advance two cents hundred pounds on lumber to Ohio River crossings, leaving questions of divisions to be considered afterwards by executive officers. Wire soon as possible if advance will positively be made by all lines, and what date effective."

This followed a telegram from Mr. Grant, dated New Orleans, February 1, 1903, as follows:

"C. C. CAMERON,

"Louisville:

"Cannot advise to-day regard advance in lumber rates. Mr. Steele will confer with president and advise you to-morrow."

Washburn's Exhibits, Vol. II., p. 691.

The N. O. & N. E. gives the most of the lumber originating on its own line to the M. & O. at Meridian, because most of it moves via Cairo. Its own average haul is eighty-five miles, and out of the division of the through rate it gets from the M. & O. six cents per hundred pounds, and from the Southern, or A. G. S., it gets five cents.

Out of the through rate paid on lumber delivered to the N. O. & N. E. by initial roads it gets three cents.

And on lumber turned over to it by the G. & S. I. at Laurel and Lumberton (but only switched by the latter road), it pays five cents per hundred pounds.

Ibid., pp. 419, 420.

The Vicksburg, Shreveport & Pacific, one of the roads of which Mr. Steele is general freight agent, makes a "tap line" allowance to mills on its line of three cents per hundred pounds on lumber which it sends north.

Ibid., p. 421.

The N. O. & N. E. had been very short of cars for two years.

C. R., p. 422.

As to Tap Line Allowances.

Tap line divisions were in effect several times on the N. O. & N. E.

Steele, Vol. II., p. 423.

Asked if he was aware of what influence was brought to bear to take them out, Mr. Steele answered:

> "The question came up repeatedly. I do not know that I can give you all the facts. I have a memorandum here showing when tap lines were put in, and when taken out, several times. Each time they were put in there was more or less correspondence and objection from lines that did not allow the tap-line proportion. They stated that they did not think the tap-line proportion should be allowed; some of them thought it would be better to reduce the rate. The tap-line proportions were made effective June 28, 1897; withdrawn March 1, 1898; put in again April 15, 1898; withdrawn June 1, 1899; put in again November 15, 1900; withdrawn October 1, 1901."

(Note—During the several periods mentioned, except the last, the 13-cent rate to Cairo was in effect, and during the last period the 14-cent rate was in effect.)

Mr. Steele stated that the situation of the lumbermen on his line (the N. O. & N. E.) was substantially similar to that of the lumbermen on the Illinois Central in respect to logging appliances, etc., and that the Illinois Central was one of the lines that objected to his tap-line allowance.

The Illinois Central insisted that, unless the practice were discontinued, it did not see how it would be possible

for it to stand the pressure from the mills on its line to reduce their rates.

Ibid., p. 423.

While Mr. Jones, auditor of the New Orleans and Northeastern Railroad Company, testified to an increase in the amount of wages and rate of wages paid by his road, and increase in the cost of material used, he admitted the increases in its earnings, as follows: In 1900, $139,000; in 1901, $90,000; in 1902, $193,000; and in 1903, $253,000 (that is, years ending June 30th).

That, while the capitalization of that road 196 miles in length, is represented by $5,000,000 of bonds and $5,000,000 of stock, it was built by the people, who continued to own it, for the stock and bonds.

Mr. Jones could not say whether or not, if the bonds and stock had been converted into cash at par, the road would have cost that much; but he gave its value for assessment, under oath, at $10,000 a mile.

That road had recently been ballasted, and the cost charged to operating expenses.

Mr. Jones gave in the A. & V. for assessment at $9,000 a mile. That road paid one dividend in 1903 of six per cent., and another of three per cent.

The N. O. & N. E. declared its first dividend in 1903.

Jones. Vol. II., pp. 424-438.

Mr. John F. Wallace, then general manager of the Illinois Central, testified, *inter alia,* that his road had, within the five years ending June 30, 1903, expended for addi-

tions and betterments on the system the sum of $81,482,426, of which $63,668,787 was provided for out of capital account, and $17,806,039 was defrayed from income.

Vol. II., p. 343.

Asked by Mr. Commissioner Prouty if the Illinois Central kept its accounts in such a way he could tell how much per mile, net, the road earned on its main line south of Cairo, the last year, Mr. Wallace said:

> "No, they are not kept that way; that is, not that particular part of the line. You know, the Illinois Central is made up of a great many small lines, and bookkeeping became so laborious to keep these different lines separately that, of late years, there has been a tendency to consolidate our accounts and operate our road in as large units of territory as possible."
>
> *Ibid.*, p. 334.

(Note—Mr. Ben C. Foutz testified that he was the bookkeeper of what are known as the subsidiary lines of the Illinois Central, including the Chicago, St. Louis & New Orleans Railway Co., and he corrected a number of statements made by Mr. Wallace. Vol. II, pp. 440-443.)

Memo.: The total capitalization of the Chicago, St. Louis & New Orleans Railway Co. (I. C. leased lines south of the Ohio River) is $28,000,000, made up of $10,000,000 stock and funded debt of $18,000,000.

Foutz, p. 443; Fish, Vol. II, p. 450.

Its net earnings for the year ending June 30, 1903, were $5,569,609, or $4,051 per mile on a total mileage of 1,374.71.

Ibid., p. 524, and statistics filed.

Mr. Wallace also stated that, in leasing the C., St. L. & N. O. Ry. Co. for 400 years, the I. C. guaranteed 4 per cent. on its $10,000,000 of stock, and assumed the payment of, in round numbers, $16,000,000, and up to June 30, 1903, the Illinois Central had spent $16,273,669 on this property.

Ibid., p. 321.

So he says that makes a total cost to the I. C. of $42,507,669.

Ibid., p. 321.

(Note—Under the terms of the lease the I. C. is entitled to retain possession of the road after the expiration of the term until all advances are repaid; but must maintain the road.)

Mr. Wallace in reply to the question how reductions in rates had been theretofore made by railroad companies in their operation, said:

> "By various means and methods; first, by increased density of traffic, which, of course, has a tendency, in a way, to take care of reductions in rates, on account of an increased volume of business, as you may be able to do part of it at less cost; second, by increase in train-loads. This latter is brought about by locomotives of larger capacity, by the double-heading of trains, by the reduction of grades, and by cars of greater capacity, enabling a greater tonnage to be gotten in the cars; and third, by refunding matured bonds at lower rates of interest than the old bonds. These have been the methods used in the past to counteract the reductions *that had been constantly going on in rates.*" (Italics by this writer.)
>
> Vol. II, p. 328.

(NOTE—The Illinois Central Railroad had made all the improvements and done all the things mentioned by Mr. Wallace in response to the question, "how rates were reduced." Only he makes it appear that it was to counteract the effect of reductions constantly going on of themselves.)

Mr. Wallace then stated that the operating expenses had increased out of proportion to the increase in gross earnings, whereupon this colloquy ensued between himself and Mr. Commissioner Prouty:

> Mr. Prouty: "I would like to know what he means by out of proportion.
>
> Mr. Wallace: "I mean this, Mr. Commissioner: For instance, suppose that in one year the proportion of operating expenses to the gross earnings was 65 per cent. and the next year that would be 67 per cent., and the next year 70, and the next year 72, I would consider that the operating expenses are increased out of proportion to the gross receipts."
>
> Mr. Prouty: "Even though your net earnings continue to increase all the time?"
>
> Mr. Wallace: "Even though the net earnings continue to increase all the time, but a little later I expect to give you some figures in regard to showing that the net earnings have decreased, although we have had a very large—you might say, enormous—increase in gross earnings."
>
> *Ibid.*, p. 328.

(NOTE—No figures were produced by Mr. Wallace to show a decrease in net earnings for any whole year, but Mr. Fish, president of the Illinois Central, produced a table of figures showing the gross and net earnings of

the road for the years 1883 to 1903, both inclusive, from which it appears that there had been a constant increase from 1897 on to 1903. In 1897, when the mileage operated was 3,130, the net earnings from operation were $6,375,053; in 1898, $8,662,350; in 1902, $12,806,690, and in 1903, $13,488,121, and other income, $3,461,148.

In 1897, 5 per cent. dividends were paid, and in 1901, 1902 and 1903, 6 per cent. were paid.

Ibid., p. 812; Fish, 3.

MEM.—In 1905, 7 per cent. dividends were paid and net earnings from operation were $14,396,943.39. And, in the year 1903, $4,981,253 were paid out of income for permanent improvements, etc.

Ibid., p. 812.

Mr. Wallace testified to the increases in the cost of material and supplies and wages of employees, and said they were not buying any more cars because they apprehended a checking of the business prosperity of the country.

Ibid., p. 30.

Asked by Mr. Prouty if his apprehensions would furnish a reason for reducing or advancing rates, Mr. Wallace replied:

> "That is a reason why we should endeavor to maintain rates as they are until we know what the conditions are going to be when that state of affairs is reached. If our business falls off, as we expect it to do, and we are not able to reduce our expenses, why, it would be a reason for very strongly maintaining present rates."

Mr. Commissioner Prouty then made the remark and put the question which follows to this witness:

> "As I understand it, these rates have been advanced in the last four or five years because you have had more business, and because the country has been prosperous, and now you say that, if you have less business, and there is no such prosperity throughout the country, you want to still further advance your rates?"

65

Mr. Wallace essayed to answer this by alleging an approximate increase in two years, in amount paid for labor, of some $2,000,000, due to negotiations with labor organizations; that his company was persuaded it would have great difficulty in reducing those wages when business should fall off and to that extent at least when business falls off they would be handicapped; that during the years of prosperity they had been hounded by their customers and clients to increase their equipment in order to take care of the increased business and furnish needed facilities; that they had spent money for new equipment, for additional tracks, additional warehouses, and facilities of all kinds and if business falls off and they don't have the traffic, they must still earn the interest on the cost of the additional facilities with a less volume of business.

Ibid., pp. 330-331.

(Note—Exhibit 3 to President Fish's testimony shows constant gains in business; in gross and net earnings.)

Ibid., p. 812.

And the testimony of Mr. Bowes, assistant general freight agent, and the report of the Illinois Central for the year ending June 30, 1905, on file, show still greater gains since Mr. Fish testified.

Bowles, Vol. I, p. 22.

Mr. Wallace also stated that the Illinois Central was not buying cars that year because they apprehended a checking of the then business prosperity of the country.

Vol. II, p. 330.

(Note—President Fish said his road was furnishing cars and engines as fast as they could get the money for them.)

Ibid., p. 462.

ORGANIZATION OF THE C., ST. L. & N. O. RY. CO.

In 1872 the Illinois Central contracted to buy bonds of the N. O., J. & G. N. R. R. and of the Mississippi Central R. R., the proceeds to be used in extending the Mississippi Central from Jackson, Tenn., through Kentucky, about 106 miles to a connection by ferry with the I. C., at Cairo. These roads had passed under the control of the Southern Railroad Association lessees.

The N. O., J. & G. N. extended from New Orleans to Canton, 206 miles, and the Mississippi Central from Canton to Jackson, Tenn., 241 miles. The extension would make a line of 557 miles, including a branch of fourteen miles.

The I. C. bought $5,000,000 of those 7 per cent. bonds, default was made in the interest. The N. O., J. & G. N.

was sold at a foreclosure sale March 17, 1877, for $1,050,000, leaving a deficiency on its bonds of $2,913,236.06. The Mississippi Central was sold at judicial sale, August 23, 1877, for $425,000, leaving a deficiency on its mortgage bonds of $3,995,374.40. The deficiency on the two sets of bonds was $6,908,610.46, and the I. C. held about two-thirds of the bonds.

The purchasing committee, representing the bondholders, under an agreement dated November 7, 1877, organized the Chicago, St. Louis & New Orleans R. R. Co., with a capital stock of $10,000,000

1st mortgage 7 per cent. bonds..$13,000,000

2nd mortgage 6 per cent. bonds.. 8,000,000 21,000,000

Total stocks and bonds $31,000,000

In 1881 a new mortgage for $18,000,000 was made at 5 per cent. to replace the $21,000,000.

On June 13, 1882, the Chicago, St. Louis & New Orleans Co. leased its railroad to the Illinois Central for 400 years, and shortly thereafter the Illinois Central made a dividend of 17 per cent. upon its then capital stock of $29,000,000, and distributed $4,930,000 of the C., St. L. & N. O. R. R. Co. stock, this stock then being worth only $75 a share. At that price Mr. Fish says the dividend amounted to only $3,697,500 and, therefore, did not reimburse the I. C. what it had lost prior to 1877 through the default of 1874 on the bonds of the two debtor roads.

Then the M. & T. R. R. Co., 100 miles, Memphis to

Grenada, was consolidated with the C., St. L. & N. O., the latter issuing therefor $3,500,000 of 4 per cent. bonds, guaranteed by the I. C., retiring $2,200,000 of 8 per cent. mortgage bonds of the first and providing for betterments.

Fish, Vol. II, pp. 450-51-52.

The Chicago, St. Louis & New Orleans Railroad Company now owns the lines from New Orleans to Cairo, 553 miles, Grenada to Memphis, 100 miles; the [illegible] & O. S. W., from Memphis to Louisville, with a number of branch lines.

Ibid., p. 454.

Asked how the Illinois Central got the stock of the C., St. L. & N. O., Mr. Fish said:

> "In the reorganization of the Chicago, St. Louis & New Orleans Railroad Company for the payment, I think, of $20. I will not swear positively to that; and for the unsatisfied deficiency on our bonds, which we held, we were entitled to it. We had judgment in there, well we had $5,000,000 of bonds, and we had a little more in deficiency in there. * * * Then they waited five years longer, in which the earnings of the road were put into the property, and no interest paid on the bonds that the Illinois Central took in 1877. The abstention from dividends putting the road in order and making a railroad of it," etc.
>
> *Ibid.,* p. 457.

Mr. Fish, as did Mr. Wallace, testified that their new engines were not giving satisfaction, but said that ultimately they would not be a failure. His company fur-

nished in 1889, 1,203,982,725 units of transportation and in 1902, 5,631,975,[illegible], although he said neither the gross nor net earnings had increased in proportion.

Ibid., p. 402.

Mr. Fish, admitting an increase of $144,498 in net earnings for the five months ending November 30, 1903, over the corresponding period of 1902, said the same were wiped out in December and, with the bad weather in January (1904), thought there would be a still further loss.

(Note—His net receipts above expense of operation and taxes for the year ending June 30, 1902, were $12,806,690 and for the year ending June 30, 1903, the same were $13,488,121. And the ratio of expense to gross earnings in the latter year was 66.03; only a trifle above that of 1901 and less than in 1897.

(Fish Exhibit 3, *Ibid.*, p. 812.)

For the year ending June 30, 1905, the net receipts were $14,396,943.39.

(Illinois Central Annual Report on file.)

According to Exhibit "G" produced by Mr. Bowes (*Ibid.*, p. 853) the net receipts from operation of the Illinois Central south of the Ohio River, that is to say, the Chicago, St. Louis and New Orleans Railroad Company, for the year ending June 30, 1903, were $5,549,321.97 as compared with $5,027,330.23 for the previous year.

The net earnings, after deducting taxes, were $4,051 per mile and after deducting interest on funded debt and leased line certificates, rentals of leased lines and stated dividends of $442,255.82, a surplus remained of $2,688,413.28, applicable to dividends or such purposes as the Illinois Central should elect.

Exhibit G, *Ibid.*, p. 854.

The capital stock of this line (south of the Ohio) is stated to be $10,000,000, so that, if the surplus were applied to dividends on the same, the rate would be something over 26 1-2 per cent.

Fish, Foutz and Wallace, *supra.*

(Note—So far as the Illinois Central System is concerned, the advance effective April 15, 1903, was put on for the benefit of this line. The rate on its line north of the Ohio River remained the same as from September, 1899.)

It will be observed further from Bowes' Exhibit G (Vol. II, p. 854) that the net earnings of the Chicago, St. Louis & New Orleans road for the year ended June 30, 1902, were $5,027,568.58; for the year ended June 30, 1903, there was an increase in net earnings from operation of $521,753.39, notwithstanding an increase in the expense of operation amounting to $1,142,220.61.

And while Mr. Fish shows (*Ibid.*, p. 812) that the expense of operation of the entire system (north and south) for the year ended June 30, 1903, was 66.03 per

cent. of the gross receipts; the percentage for the Southern lines was 65.53.

Mr. Bowes also produced a table (*Ibid.*, p. 853) showing the earnings of the I. C. on lumber coming from the G. & S. I. to Columbus, O., via Evansville and Louisville, 3.69 and 3.02 mills; same to Indianapolis, via Evansville and Louisville, 4.47 mills and 3.36.

From McComb City (I. C.'s. own line) to Columbus, via Louisville 4.75 mills, and via Evansville, 5.56, etc., but the combined lines of the G. & S. I. and the I. C. earns to East Cairo 6.18 mills.

(Note—The G. & S. I. under its ten-year contract gets 7 cents per 100 pounds on the average eighty-mile haul.)

Mr. A. M. Searles, the civil engineer who examined the Gulf & Ship Island Railroad and its equipment, having testified that its main line and equipment, shops, tanks, etc., could be duplicated for $12,000 per mile and its branches for $9,000 per mile. (Vol. II, p. 519),

Mr. J. T. Jones, of Buffalo, N. Y., president of the Gulf & Ship Island, testified that the statement of Mr. Searles was false and foolish, and that as near as he could figure out the actual cost of the main line between Jackson and Gulfport, including shops, equipment and appurtenances, depots, harbor, channel, pier and the approaches and terminals and elsewhere, worth much more than cost, which was $. . . . . ; that the total cost of the two branches (Laurel and Columbia), the cost of the charter, the cleaning up and clearing of records of all

outstanding obligations; paying off the outstanding bonds and stock, including attorney's fees, and commissions and other costs up to date is about $10,500,000, as near as he could get at it, including all equipment, rolling stock, pier, channel and anchorage basin.

Mr. Jones says that when he took charge in 1895 and 1896 the road was in the hands of a receiver; that it had twenty miles in operation that cost the present owners $600,000; that there were four hundred or five hundred thousand dollars of bonds outstanding and the road owed the State $40,000 for convict labor in grading.

Vol. II, pp. 587-88-89.

R. Morgan, superintendent, testified to the good condition of the road and Mr. Vail testified that it would cost in the aggregate $8,491,200 to duplicate the entire property.

Ibid., pp. 590-595.

(Note—(*a*) Col. Stewart, former receiver of the Gulf & Ship Island Railroad Company, testified that as such receiver he contracted for the building and equipping of the line from Gulfport to Hattiesburg, about seventy-eight miles, for $600,000. Same had been partly graded by convict labor, but washed up and out of shape.

Vol. 1, p. 380.

(*b*) Mr. Gardiner testified that Eastman, Gardiner & Co. sold the completed portion of the Laurel Branch to the G. & S. I. R. R. Co. for $160,000 (twenty miles) or about $8,000 per mile, reserving logging rights, and that

same was as good as any other part of the line; that same cost his company about $6,000 a mile to build.

Vol. I, p. 385.

(*c*) *N. G. Scott* testified that he had the contract to build the road-bed, culverts, etc., and to lay the track on the Laurel Branch from the Eastman, Gardiner & Co. terminal to Saratoga, the railroad company or construction company to furnish rails and ties, and that he finished all except three or four miles and the entire amount of his bill was $64,337.44.

Ibid., p. 371.

That if he had laid the track on to Saratoga, his bill would have been $3,000 or $4,000 more. Second-hand forty and sixty-pound rail was used. Mr. Scott filed his contract in evidence. Mr. Scott was also interested in the building of the Columbia Branch, same description of contract, and thinks the amount to be paid was about $140,000.

Mr. Vail figured cost of duplicating main line and equipment (190 miles?) exclusive of the pier, harbor and channel at $32,615 per mile.

Vol. II, p. 576.

(*d*) The record in the receivership of the Gulf & Ship Island has been lost.

Vol. I, p. 416.

(*e*) No construction contracts can be produced by the president (Jones) or auditor (Gee) of the Gulf & Ship

Island road. Depositions of Jones and Gee filed date of hearing.

Vol. I, pp. 469 and 479.

(*f*) While Gee, auditor, testified that the cost of the road and equipment as shown by the books of that company on June 30, 1903, was $10,139,075.50, and that there were 251 miles in operation, he was unable to say how the money was raised or paid. He could not say nor did his books show what was realized for the $5,000,000 stock of the company.

Vol. I, pp. 187 and 199.

He said that while the stock stood as a charge he did not know whether any particular sum of money was produced from its issue.

And asked how he knew the road cost $10,139,075.50 ($40,394.00 per mile), except from the circumstance that the outstanding stock and bonds represented that amount, he said the company got its consulting engineer to make the divisions for the purpose of its report to the Interstate Commerce Commission and that he (the engineer) went on his knowledge of what it cost to build the road, although he did not build it. That was an estimate.

> "We used his division, say, for rails and bridges and such as that, and the slight difference, I can't remember what it was, we put into general expenses so as to have that and the report to the Interstate Commerce Commission agree."

Vol. I, pp. 201 and 202.

Mem.: Mr. Vail had stated the mileage of this road at 190 miles main line and eighty-nine miles of branch road, in all 279 miles, and figured that it would cost $8,491,200 to reproduce the whole.

Mr. Gee was examined as a witness after the present suit was begun, and after the Interstate Commerce Commission had declared that excessive divisions to initial carriers would not justify the advance in the through rate paid by the shipper.

Mr. Gee said the net earnings of the G. & S. I. R. R. Co. for the year ending June 30, 1903, were $657,078.42 ($2,617.84 per mile), which he said would pay 6 per cent. per annum interest on $43,631 per mile, and that, if the 2 cents advance were cut off the revenues of the road, it would pay 6 per cent. interest on a valuation of $30,350.49 per mile.

Vol. I, pp. 187 and 191.

(Note—The Gulf & Ship Island Railroad Company has made Gulfport a free port, charging the ships entering and clearing and using its docks and other facilities nothing.)

Gee, Vol. I, p. 203.

Mr. Hale, second vice-president of the Gulf & Ship Island explained how the trunk lines were justified in allowing the divisions to his road, by stating that his was a new road, built into the pine woods and having four or five railroads competing for its business; that they (the G. & S. I.) could not expect to build up the

country with settlers and industries as fast as the timber was cut off; that the trunk lines were justified in making this allowance out of the through rate because it was competition business; that their lines were completed, the organization established with the expenses of the different departments going on and they could take on this additional business at a very much less rate per ton per mile than otherwise.

Hale, Vol. I, 213-214.

(Note—The annual reports of the G. & S. I. on file show that agriculture and industries of various kinds are springing up rapidly as the timber is cut away and furnish profitable business to the road.)

Before the Gulf & Ship Island road was finished to Jackson (and sold its tonnage to the highest bidder, Bowes, Vol. I, p. 145) its rail connections allowed it 3 to 4 cents out of the through rate to Central Freight Association territory.

Hale, *Ibid.*, p. 215.

The line was completed to Jackson, in July, 1900, while the Cairo rate was 14 cents, and then the Illinois Central made the ten-year contract to allow it 7 cents for the average eighty-mile haul.

Ibid., p. 89.

The G. & S. I. receives 7 cents out of the through rate on lumber from Laurel to Jackson, which Mr. Hale says is about ninety miles, and 7 cents to Gulfport, 152 miles.

Ibid., pp. 230-231.

In February, 1906, the depositions of F. B. Bowes, Haiden Miller, C. B. Compton, L. Green and T. F. Steele, traffic men of the Illinois Central, the Mobile & Ohio, the Louisville & Nashville, the Southern and the Queen & Crescent system were taken with reference to changed circumstances, since the last testimony was taken before the Commission, as affecting the reasonableness of the rates on lumber, made effective April 15, 1903.

Ibid., pp. 129-348.

Mr. Bowes, of the I. C., testified to an advance of 15 per cent. on lumber, 3 per cent. on locomotives, 14 per cent. on box cars, 27 per cent. on coal cars and 25 per cent. on flat cars, 10 per cent. on coal, and 8 per cent. in labor. That the total effect of these advances was to increase the operating expenses of the Illinois Central approximately 10 per cent. (over 1903).

Ibid., pp. 131-132.

(Note—The net earnings from operation of the Illinois Central above operating expenses and taxes in 1903 were: $12,488,121 against $12,806,690 in 1902, in spite of lack of cars and congestion of traffic, and $11,058,668 in 1904. So that for the year ending June 30, 1903, there was an increase in net earnings from operation over 1901 of more than 22 per cent., while the proportion of operation expenses to gross receipts only increased from 65.72 per cent. in 1901 to 66.03 in 1903.)

Fish, Exhibit 3, Vol. II, p. 812.

In the year ending June 30, 1905, its net revenue from operation, after deducting taxes, was $14,396,943.89. (I. C. An. Report on file, page 1.)

The dividends paid stockholders of this company have risen from 5 per cent. in 1900 to 7 per cent. in 1905.

Fish, Exhibit 3, *Ibid.*, p. 812.
I. C. An. Report, 1905, Vol. I, pp. 436-437.

Mr. Bowes also testified that the advance of 2 cents on lumber was the separate and independent action of the Illinois Central and not the result of any contract, agreement, combination or conspiracy between that company and other lines. (*Ibid.*, p. 133.) Yet he admitted attending the conference of the traffic men, representing the various roads east of the Mississippi River, held at New Orleans, January, 1903, when men, representing the various roads east of the Mississippi river and members or representatives of the so-called east side lines, and their views were given as to the idea of an advance, and that "as a result of that discussion, the individual members or representatives of the so-called east-side lines stated that nothing could be done, of course, without or until the Arkansas lines gave their views as to whether it was desirable or not, and the meeting adjourned with that result."

Vol. I, p. 136.

(Note—In respect to what was accomplished at the St. Louis meeting immediately following the meeting at New Orleans, see Washburn's Exhibits.)

Vol. II, pp. 188-811.

Mr. Bowes also stated that the average rate per ton per mile on all traffic of the I. C. in 1903 was 5.91 mills per ton; in 1904, 6.07 mills, and in 1905, 5.87 mills, attributing the reduction in 1905 to excess of coal traffic, which bears less than 4 mills.

Ibid., pp. 140-141.

He stated that the Interstate Commerce Commission was in error in saying that the average rate per ton per mile on lumber charged by the Illinois Central was above its average on all traffic.

(Note—Mr. Haiden Miller, traffic manager of the Mobile & Ohio, testified that he had no knowledge of so great an allowance being made to an originating line as that of the I. C. to the G. & S. I.)

Ibid., p. 158.

Mr. Bowes filed a statement showing the movement of yellow pine through Cairo (and Mounds) *via* the I. C. from Alabama, Florida, Georgia, East Louisiana and Mississippi for the years 1904 and 1905, showing an increase in 1905 of 5,441 cars.

"TAP LINES."

This question was put to Mr. Bowes:

"The Illinois Central never recognized any claims such as are known as 'tap lines' demands, did it, until lately?"

And he answered: "Not until the first of this month" (February, 1906) and added:

> "It is our aim not to make it uniform 2 cents, but to pay less than 2 cents when the road is a short one, as against some of the larger lines."
>
> *Ibid.*, p. 146.

Mr. Haiden Miller testified to a movement of yellow pine lumber via Mobile & Ohio Railroad to Ohio River points beyond, as follows:

1902 .....528,167 tons.
1903 .....531,211 tons.
1904 .....462,408 tons.
1905 .....537,118 tons.

Ibid., p. 153.

Saying it was claimed the Presidential election had something to do with the slack orders for car material in 1904.

He also testified to the improvement in the demand and prices for lumber.

Had no information in detail as to increase in the expense of operation, only a general understanding that same had increased.

Ibid., p. 154.

His understanding is that the gross and net earnings of the M. & O. have increased since 1903.

Ibid., pp. 156-157.

Annual reports are filed showing the increase.

The M. & O. allows a tap line division to logging roads not exceeding 3½ cents per 100 pounds.

Ibid., pp. 158-159.

There has been a continuous increase in the traffic handled by the M. & O. during the last three years.

Ibid., p. 161.

Asked if lumber had not always been considered a low class traffic, and if it ought not to be so on general traffic principles, Mr. Miller said it had been a low class traffic as compared to some other articles; compared to some other things there is very little risk in handling it; it is an all the year traffic; moves in either box or open cars.

Ibid., p. 162.

For some years the M. & O. has been trying to work its car capacity up to 60,000 lbs. capacity; locomotives heavier.

Ibid., pp. 162-163.

"Q. The purpose being, of course, to cheapen the expense of transportation, hasn't it been?

A. Well, it has been to give a greater tonnage moving power."

With reference to trouble testified to, in the Meridian yard of the M. & O. (1902), Mr. Miller said that had been overcome by putting in new tracks and extending the yards.

Ibid., p. 163.

In 1902-03 business increased materially.

Ibid., p. 164.

Mr. Miller, over complainant's objection, read a telegram from his general manager to the effect that there had been an advance in the price of material used in maintaining and operating railroads amounting to probably 40 per cent, which would increase the cost of operation about 10 per cent.

Miller, *Ibid.*, p. 165.

Personally the witness knew nothing about it.

Mr. C. B. Compton, traffic manager of the Louisville and Nashville, upon his examination, February 8-9, 1906, was asked by defendant's counsel to state

> "what changes, if any, have occurred since the last testimony was taken in this case, before the Commission, in the circumstances and conditions affecting the reasonableness of the rates on lumber made effective April 15, 1903, from points in Mississippi, Louisiana, east of the Mississippi River, and Western Alabama, to Ohio River points and beyond."

To which he answered as follows:

> "Improved market conditions, and demand for lumber. Locomotive works and car manufactories cannot supply the demand upon them. Business conditions have generally improved, and continue to improve, and the end is not in sight. In so far as the prosperity of the lumbermen is affected by the general prosperity they have no cause of complaint, and have great cause for satisfaction.
>
> "The car supply of the Louisville & Nashville Railroad has been taxed to its utmost. This is true with respect to lumber shipments, as well as of commodi-

ties in general, although we are now furnishing to lumber shippers on our line more cars than we were called on to furnish in previous years, yet the supply is inadequate, and no transportation man could possibly have anticipated and been ready for the emergency which has occurred.

"By reason of shortage of cars the Louisville & Nashville Railroad has considered that its first duty was to the mill men upon its own line, and it has discontinued the sending of cars off its own line for loading at mills on foreign roads. The car shortage has been practically continuous since the Presidential election, and still continues, notwithstanding we have substantially increased our rolling stock."

Vol. I, p. 167.

Mr. Compton also said the advance of 2 cents was made by the L. & N. separately and independently; that he, as traffic manager, handled it personally.

Ibid., p. 169.

Recalled no correspondence with Mr. Washburn about bringing his road into line (page 57). Attended the St. Augustine meeting (*Ibid.*, p. 183), where they simply talked about the matter. Handled the lumber question himself and does not think the Louisville & Nashville was represented at the St. Louis meeting. Not sure whether he attended the New Orleans meeting or not.

Ibid., p. 183.

(Note—The minutes of the Southeastern Mississippi Valley Association produced by M. P. Washburn, chairman, has the following entry of proceedings of the meet-

ing of interested lines held at the Southern Hotel, St. Louis, Mo., January 30, 1903):

> "The following lines were represented: Illinois Central Railroad, C. C. Cameron, R. M. Rhett, W. L. Smith, J. Hatendorf; K. C. M. & B. R. R., A. S. Dodge, L. & N. R. R., D. M. Goodwyn; Southern Railway, MvClung," etc.
>
> Vol. II, p. 695.

Mr. Compton produced statements showing lumber prices at Montgomery, Ala., and Nashville, Tenn., for the months of October, 1901, 1902-03-04 and 1905. These show advances at Montgomery running from 50 cents to $4 per 1,000 feet in certain kinds of lumber. As for car lumber, lumber for bridges, trestles, etc. (railroad material), six classes underwent no change in the five years; five increased $2 per 1,000; three increased $1 per 1,000; one, $1.50 per 1,000, and one increased $3 per 1,000.

Ibid., pp. 287-308.

The advance in price at Nashville is greater on the average, but the table does not specify car or other railroad material.

Mr. Compton testified that since February, 1904, his company had built and bough mtaterial for about 8,000 freight cars and that the increased cost of those cars, by reason of the increased prices of lumber over those prevailing in February, 1904, has been not less than $400,000 (equal to $50 per car).

Vol. I, p. 172.

(Note—(*a*) In giving a statement showing comparative advance in the prices of lumber for cars at Montgomery, 1903-04-05, five kinds of lumber are given, the average advance upon which, from October, 1903, to June, 1905, was $1.80 per 1,000 fett, and an extra list is given for gondola sills, on which the advance stated is $1.50 per 1,000 feet.

Ibid., pp. 291-292.

(*b*) As a thirty-six-foot box car contains only 5282 feet of lumber (Enochs, Vol. I, pp. 411-412), the average advance in the prices shown by Mr. Compton in the Montgomery market—viz., $1.80 per 1,000 feet—would have added not exceeding $9 per car instead of $50, thus reducing Mr. Compton's figures from $400,000 to $76,000, if all 8,000 were box cars.

(*c*) Mr. Compton did not say how his freight cars were divided, how many box cars, how many gondola or coal cars, or how many flat cars. A gondola or coal car contains only 3,247 feet of lumber, and a flat car only 2,326 feet.

Ibid., p. 412.

(*d*) Montgomery is not a lumber-producing point, and the prices given by Mr. Compton are not manufacturers' prices.

Ibid., p. 397.

Nashville is entirely above the yellow pine belt.

Powell's Letter, *supra*.

(*e*) Manufacturers' prices are not given by Compton. Butterfield shows cost of lumber to his company in 1904 was $12.92 per 1,000 and selling price, $12.54, and in 1905 cost was $13.53 and selling price, $15.08. Eastman, Gardiner & Co.'s selling average price in 1904 was $10.64, and cost $10.37, and in 1905 their average selling price was $13.57 and the cost, $11.44.

Ibid., pp. 407-410.

Butterfield in 1905 sold a very large percentage of high grade flooring and ceiling for the New England and Boston market; its manufacture costing much more, that brought its average higher.

Ibid., p. 383.

Compton produced tables showing movement of lumber via the L. & N. to Ohio River crossings and beyond. 1903, 9,199 cars; 1904, 9,170 cars, and in 1905, 12,835 cars.

Ibid., pp. 309-310.

Also tables to show comparison of lumber prices and freight rates in Chicago market, the rate being from Group 1, Southern Railway in Georgia, from 1891 to 1905, both inclusive.

Ibid., pp. 311-321.

(Note—From the table it appears that the rate to Chicago was 24 cents per 100 lbs. from the beginning of the fourth quarter of 1891 to the end of the first quarter of 1894, when it was reduced to 22 cents, and so remained until the end of the third quarter of 1899, when it was

raised to 23 cents (September 8, 1899), then from the first quarter of 1900 (inclusive) to the third quarter of 1903 it was 24 cents to Chicago.)

Mr. Compton also filed an exhibit showing prices for yellow pine lumber sills, intermediate and large, paid by the L. & N. from January, 1900, to December, 1905, by quarters. Same shows an advance in price of intermediate sills from December, 1903, to September, 1905, of $1 per 1,000 feet, and for large sills, same period, an advance of $2. Then, from September, 1905, to December, 1905, there is an advance of $1 on intermediate and $2 on large sills.

Ibid., p. 322.

(Note—Mr. Compton stated that his company uses about 4,000,000 feet of these grades annually and about 4,000,000 of all kinds (*Ibid.*, p. 45), and allowing an increase of $2 as an average for this lumber from February, 1904, on 4,000,000 feet the amount would be $8,000 per annum increase, and allowing $2 (which is above average shown) for the advance on other company's material, the remaining 3,600,000 could only have been increased, say, $72,000 per annum. Reference is here meant to statement of Compton that the increased cost of lumber had increased the cost of the 8,000 cars built by his company since February, 1904 (the date of the hearing by the Commission), not less than $400,000.)

Vol. I, pp. 171-172.

Mr. Compton stated that the average advance in lumber in 1905 over 1903 was about 10 per cent.

Ibid, p. 173.

(Note—The present demand bringing up prices quoted for 1905 is an abnormal one and temporary. Enochs, Vol. I, pp. 406-407.)

IMPROVEMENTS IN EARNINGS OF THE L. & N. R. R. Co.

The capacity and ability of the Louisville & Nashville to handle traffic has improved since 1902. It is better to-day (February, 1906) than in previous years.

It was a common complaint throughout the Southern country in 1902, there was such an enormous traffic that, with the facilities the railroads had, they had great difficulty in taking care of it.

Ibid., p. 175.

And the constant effort has been since that time to make the facilities equal to the demand upon them.

Ibid.

He also stated that during the panic of 1893 the rates were reduced substantially on lumber, and he felt that when times got better it was reasonable to restore the rates that had been previously in effect. "That was what the advance amounted to."

(Note—Compton Exhibit No. 4, Vol. I, p. 211, shows the rate to Chicago from the fourth quarter of 1891, throughout 1892 and 1893, and first quarter of 1894, was 24 cents per 100 pounds, when it was reduced to 22 cents, and so remained until the fourth quarter 1899.)

Asked, if, in old times, when the highest rate prevailed (25 cents in box and 28 cents in flat cars, same exhibit), operating conditions were not much more unfavorable to railroads than in 1903, Mr. Compton made this answer:

> "Well, I can take the operating expenses of our company to-day as compared with the gross-earnings, and they are greater than before. Everything entering into cost of transportation has substantially increased in price."
>
> "Q. Still the railroad, as a whole, has increased its earnings constantly for a great many years?
>
> A. Yes; our condition, with respect to gross earnings, has improved.
>
> Q. And net earnings, also, have they not, in amount?
>
> A. I think it perfectly fair to say that our condition is better to-day than before, but, notwithstanding that fact, operating expenses have substantially increased.
>
> Q. The increase in net results has been due, of course, to the increase in the volume of traffic?
>
> A. In the volume of traffic; yes, sir."
>
> Vol. I, pp. 181-182.

Respecting Cost and Earnings of Gulf & Ship Island Railroad.

While, as shown above, no witness could give figures showing how the Gulf & Ship Island actually cost the amount of its capitalization in stock and bonds ($10,139,075,50, or $40,394.72 per mile; Gee, Vol. I, p. 194), its net earnings in 1903 were $657,078.42, equal to 6 per cent. on

$43,631 per mile of its entire road, main line and branches. Mr. Gee, its auditor, stated that, if it should lose 2 cents per 100 pounds from its present division with the I. C., its net earnings of 1903 would still pay 6 per cent. interest on $30,350.49.

Ibid., p. 191.

(Note—(*a*) Not only did the engineer, Mr. Searles, say the main line and equipment could be duplicated for $12,000 a mile, and the branches for $9,000 a mile; not only did Mr. Gardiner testify that twenty miles of the Laurel branch cost his company about $6,000 a mile and sold it for $8,000 a mile; but Mr. Hale, its vice-president, admitted that a large portion of the main line was laid with second-hand rails, and that the main line has a heavier rail, and its cuts are wider.)

Ibid., p. 222.

(*b*) The deposition of Mr. Gee filed the day of the hearing, and exhibit annexed to interrogations, show present prosperity of that road.

Asked if he could furnish a statement showing amount of money realized by the G. & S. I. from stock sales, or subscriptions, or from its land agent, Mr. Gee, its auditor since March 1, 1902 (*Ibid.*, p. 199), said that would be very hard to get at; did not know that he could get it up; that prior to his taking charge of the accounting department, its accounts were not well kept; that it is almost impossible to get details.

Ibid., p. 204.

Mr. Hale stated that prior to the completion of that road to Jackson, which was in the year 1900, the G. & S. I. received 3 to 4 cents out of its through rate from its connections (the N. O. & N. E. at Hattiesburg, and the L. & N. at Gulfport).

Ibid., p. 223.

Its rate to Gulfport at present is 4 to 7 cents, according to distance, for lumber destined for coastwise or export shipment; present average 5½ to 6 cents.

Ibid., p. 217.

The Gulf & Ship Island has no steamship or ship connections.

Ibid., p. 226.

The Illinois Central agreed to make the divisions with the Gulf & Ship Island (7 cents to Central Freight Association territory and 6 per cent. beyond Pittsburg) if the latter would extend its line to Jackson instead of to some other point.

Hale, *Ibid.*, p. 228.

The Gulf & Ship Island takes lumber from the M., J. & K. to Jackson for 3 cents.

Hale, *Ibid.*, p. 236.

The G. & S. I., about 1901, made a "tap line" allowance of 2 cents to Eastman, Gardiner & Co. and the Newman Lumber Company, on lumber manufactured at junction points.

Ibid., pp. 236-237.

The movement of lumber via the G. & S. I. for points on and north of the Ohio River, was, in 1902, 22,799 cars; 1903, 22,441 cars; 1904, 15,850 cars; in 1905, 21,118 cars.

Mr. L. Green, assistant traffic manager of the Southern Railway, when asked concerning changed conditions affecting the reasonableness of the lumber rate advance since February 15-19, 1904, said that, prior to April 15, 1903, there had been great activity in the lumber market, prices high and demand strong; the railroads being heavy purchasers, and the demand in the building trade also good; that condition lasted until the last half of 1903, when the railroad had retired from the market for cars; the decline was also due to other depressing conditions; probably owing to the approaching Presidential election and its uncertainty, and the stringency in the money market. These conditions continued through the first half of 1904. The mills reduced their output one-third July 1, 1904. There was a reduction in price in February, 1904, lower than since March, 1901. The advance began in August, 1904. And he filed a statement giving a comparison of lumber prices, January, 1904, February, 1904, August, 1904, and February, 1906. Says: "An edge grain flooring, January, 1904, was $29 per 1,000; February, 1904, $26, and February, 1906, $35.50."

Ibid., pp. 245-246.

Green, Exhibit I, same, p. 323.

Prices are at points north of the Ohio River.

He said the advance was the result of consideration given the lumber traffic in December, 1902, and January, 1903 (meaning the supposed prosperity of the manufacturers).

Ibid., p. 247.

(Note—See letter of Powell, *supra.*)

Mr. Green also filed an exhibit of prices of lumber at points on and north of the Ohio River compiled from the American Lumberman, showing advances since February, 1904.

Exhibit 6, *Ibid.*, p. 332.
Green, Exhibit 2, *Ibid.*, pp. 324-325.

February is selected as the beginning instead of January, 1904, when prices were higher.

Green also filed an Exhibit No. 4, giving a comparison of prices between February, 1898, at points on and north of the Ohio River, and February, 1906, showing advances. Also, a statement of lumber dealers' prices in Atlanta, Ga., October, 1902-03-04, and to June, 1905.

(Note—(*a*) None of the prices given in any of the statements appear to be manufacturers' prices. While advances on and north of the Ohio River run from $5.25 to $22 per thousand since 1898, and from February, 1904, an average of $6.08 and $9.50 on certain grades the average of the advance on seven varieties in the Atlanta market is only $2.64 per thousand, the advances being $2.50 and under, except on one class.)

Ibid., p. 332.

(*b*) The edge-grain flooring selected by Mr. Green, showing an advance of $14.50 per thousand does not exceed 2 per cent. of the product to the manufacturer. To get at the general average of the low grade product, consideration would have to be given to the differences in grades and values.

(*c*) The Exhibit 2 shows advances since February, 1904. In 1904, prices ruled lower than at any time since the controversy began.

(*d*) All four exhibits give prices at points of delivery and the price at point of delivery is a composite price governed by rate, manufacturers' price and in the retail trade there is also the retailers' local cost.

(*e*) Unless the whole product of manufacture is taken, and the price on all of it, it is impracticable to determine the ratio of increase of price to the manufacturer.

Enochs, *Ibid.*, pp. 398, 400.

(*f*) The average cost and selling prices per 1000 of the Pearl River Lumber Company, one of the largest producers on the I. C. R. R., for the years 1902, 1903, 1904 and 1905, were: 1902, cost, $10.14, selling price $12.55, difference, $2.10; 1903, cost, $10.22, selling, $11.93, difference, $1.71; 1904, cost, $11.03, selling, $11.68, difference, 65 cents; 1905, cost, $11.43, selling, $13.69; difference, $2.26.

Ibid., p. 399.

Mr. Green states (*Ibid.*, p. 250) that the average price of pine lumber purchased by the Southern Railway in

1904, July to December (the time of the depression following 1902-03) was $12.83 per 1000, and for the corresponding period in 1905 was $16.52, an increase of $3.69 per 1000 feet.

(Note—The Montgomery prices furnished by Mr. Compton [for the years 1904 and 1905] show advances on car lumber as follows:

Flooring, $1 per 1000; siding, $1; sideboards, 10x36, no advance; sideboards, 12x36, $1; box car sills, $1; gondola sills, $1.50; bridge lumber, guide rails, $1; stringers, no advance. Lumber for trestles, guide rails, no advance; stringers, no advance; bolsters, $1; taps, 14x12, no advance; taps, 12x12, 50 cents; legs, 12x12, 50 cents; bracing, no advance; sills, no advance.

The months taken by Mr. Compton of each year are October and June, respectively.

The figures given by the producers, *supra,* show no such advance as Mr. Green's tables indicate.

THE SOUTHERN RAILWAY—WHAT IT IS AND ITS PROSPERITY.

The Southern Railway for the year ended June 30, 1903, operated an average of 7,129.39 miles; its gross earnings were $42,354,060, and its net earnings were $11,364,920.

For the year ended June 30, 1904, its average mileage was 7,164.39; gross earnings, $48,145,108, and net earnings $11,994,310.

For the year ended June 30, 1905 (mileage, 7,198.99), its gross earnings were $48,145,108; net earnings, $13,062,593.

Showing an increase in net earnings in two years of $1,697,673.

Green, *Ibid.*, pp. 257-258.

The Southern Railway, since June, 1905, has ordered 11,000 cars; since 1902 it has improved its service, increased its equipment and motive power.

Owing to the enormous amount of business offered in 1902 there was congestion and great difficulty in handling it.

(Note—The Southern Railway appears to have instigated and initiated the advance complained of.)

Powell's letter to Hudson, *supra.*

No part of the Southern Railway was built for the purpose for which it is now being used. It was all built originally as local lines; it is a big aggregation of short lines not intended for the public demand now made.

Its prospective growing and increasing business has justified or necessitated its recent enlarged equipment in the way of cars.

Ibid., p. 259.

The Southern has 813.30 miles under long lease, and has 461.97 miles of trackage rights.

It leases, among others, for ninety-nine years, the North Carolina Railroad, 224 miles, and the Atlanta & Charlotte Air Line.

Ibid., pp. 261-262.

The Southern also owns or controls the Mobile & Ohio, with lines from Montgomery and Mobile, Ala., via Cairo, to St. Louis. A railroad which makes a tap line allowance to certain of its large shippers, having logging roads, running as high as 3½ cents per 100 pounds.

Haiden Miller, *supra.*

Sixty per cent. of the lumber originating on the New Orleans & Northeastern and Alabama & Vicksburg moves from Meridian, Miss., by the Mobile & Ohio.

Steele, Ibid., p. 263.

But these roads do not share in the advance of 2 cents on lumber moving via the Mobile & Ohio.

Ibid., pp. 263-264.

THE NEW ORLEANS & NORTHEASTERN AND A. & V.

Mr. Steele, general freight agent of these lines, testified in February of 1906.

He gave the movement of lumber via the N. O. & N. E. for 1902-03-04 and 1905, as follows: 1902, 12,443 cars; 1903, 12,428; 1904, 9,910; 1905, 12,987, and by the A. & V., 1706, 1329, 1074 and 1063 cars.

Hattiesburg (taken as a representative point on the N. O. & N. E.) to Cairo is 443 miles, so that under the

present rate of 16 cents, the rate per ton per mile, via the N. O. & N. E. and M. & O., is a fraction above 7 mills.

Steele (defendant), *Ibid.*, p. 265.

(Note—When Barnett was general freight agent of the N. O. & N. E., the 13-cent rate was considered reasonable. The average rate per ton per mile on all freight of the N. O. & N. E. is 8 3/10 mills per ton per mile. On lumber its average haul is eighty-five miles, and its average rate per ton per mile is 14 mills on the 6 cent division.

Robinson, Vol. II, p. 557.

At various times, from 1897 to 1901 (the 13 and 14 cent periods) the New Orleans & Northeastern made an allowance out of the through rate to the various logging roads on its lines. It was discontinued for many reasons; among others, complaints from smaller lines than ten miles. The Illinois Central and other lines objected to it. The allowance was 2 cents per 100 pounds.

Vol. I, p. 279, 282.

The N. O. & N. E. showed only deficits until 1897-98, and the largest surplus it shows was in the year 1902-1903, the year of the advance.

Steele (defendant), *Ibid.*, p. 268.)

He understands "surplus" to mean the amount over and above the road's fixed charges and dividends paid on the stock.

Ibid., p. —.

(Note—The New Orleans & Northeastern and A. & V. do not participate in the advance made, although concurring, but publish the through rate showing same.)

Ibid., p. 264.

BRIDGE ARBITRARY.

An arbitrary rate of 2 cents per 100 pounds is charged in the through rate on all lumber crossing the Ohio River at Cairo. The bridge is the property of the Chicago, St. Louis & New Orleans Railroad Company, for whose benefit the advance was made, so far as the I. C. is concerned.

Bowes, Vol. II, p. 495.

The legal autonomy of the C., St. L. & N. O. R. R. Co. is preserved throughout the 400 years' lease, but it is operated by the Illinois Central. The report of the latter for the year ending June 30, 1903, gave its own stock at $95,040,000 and funded debt at $112,969,525 and the funded debt of the C. St. L. & N. O. at $16,234,000, total funded debt, $125,203,525.

Ibid., p. 508.

It is stated that in the acquisition of the Chesapeake, Ohio & Southwestern an additional mortgage was placed on the Southern line.

Ibid., p. 507.

On the hearing at Washington, Mr. Gardiner produced and filed a comprehensive statement of lumber rates into central traffic territory, and elsewhere in the country,

from the published tariffs of the various railroads, showing rates per ton per mile distance, etc.

Ibid., pp. 523; Exhibit, pp. 660-677.

This exhibit shows three rates at 3 to 3½ mills per ton per mile; nine at 3½ to 4 mills; twenty-three at 4 to 4½; sixty-seven at 4½ to 5; eighty-six from 5 to 5½; sixty-eight from 5½ to 6; fifty-one from 6 to 6½; forty-seven from 6 to 6½; thirty-three from 7 to 7½; twenty from 7½ to 8, and fifteen from 8 to 8½ mills.

(Note—The rate of the I. C. to East Cairo from McComb City, a representative point, is 6.02 mills per ton per mile—that is to say, with the bridge arbitrary off.)

The same is true of the combination rate of the I. C. and Gulf & Ship Island for the same average distance, although the proportion of the latter is excessive, considering time and distance.

Bowes, *Ibid.*, pp. 565-566.

The Mobile & Ohio Railroad pays the Illinois Central an annual rental of $100,000 for use of the Cairo bridge. The I. C. leases the bridge from the C., St. L. & N. O. for $180,000 a year.

Ibid, p. 567.

C. W. Robinson testified that, in 1898, Mr. Hudson, general traffic manager of the Illinois Central, stated to Mr. Harrahan, its vice-president, in his presence, that the Illinois Central was then allowing 7 cents on lumber from the line of the Northeastern and the Alabama & Vicks-

burg at Jackson. Mr. Robinson was then asking for an arbitrary of 6 cents on a line he and others proposed to build from Meridian to Ackerman, a station on the Aberdeen branch of the I. C., and when asked by Mr. Harrahan, if the difference in the through rate, less the arbitrary, would yield the I. C. a profitable business, Mr. Hudson unhestitatingly said: "Yes, sir; it would give a profitable business."

Ibid., p. 555, confirming A. S. Johnston, *supra*.

The mileage of the Illinois Central, since 1894, has increased 48.60 per cent. The engine or locomotive increase up to 1902 was 60 per cent. The increase in tons of revenue freight carried was 354 per cent. The increase in passenger service was 232 per cent.

Ibid., p. 550.

The Illinois Central for the years 1898 to 1903, inclusive, expended for permanent improvements from income, $18,729,321. In 1903 the amount being $4,981,263.

Ibid., pp. 534 and 639.

The price of coal in 1903 was less than in 1893.

Ibid., p. 550.

Under the 14-cent rate, from March 17 to April 14, 1903, the Fernwood Lumber Company shipped, via the Illinois Central to Chicago, twenty cars of lumber. The combined capacity of the cars was 1,490,000 pounds, or an average of 27.23 tons. The loading was 1,524,300 pounds an average of 102 per cent. of capacity. The rate

to Chicago was 24 cents and the freight paid on the twenty cars was $3,658.26. The average revenue per car was $182.91.

Enochs, Vol. II, p. 283, exhibit, p. 625.

The cause of the decreasing increase in earnings (congestion of traffic) in 1902 is shown by the movement of fifty cars of lumber shipped from Fernwood, Miss., in December, 1902, by the I. C., the average mileage per day being 22.07 miles.

Exhibit 14, Vol. II, p. 622.

The loading of these cars was 86.08 per cent. of capacity.

The statistics show that the advance made in wages in the ten-year period (to and including 1902) do not reach the condition of wages in 1892.

Enochs, *Ibid.*, p. 530.

Movement of Empty Cars.

The statistical report of the Interstate Commerce Commission, produced at the hearing before the Commission, showed that the movement of empties on railroads north and south of the Ohio River, Group 6 and Group 5, was about balanced, 306,633,833 north, and 345,548,964 south.

An illustration of the handling of lumber by the I. C. and connections is given by Mr. Enochs on a shipment of twenty-five cars to Niagara Falls. The total miles for all on the I. C., was 19,082; on the Erie Railroad, 5,051, and on the Michigan Central, 8,500. The daily average

on the I. C. was 49 miles; on the Erie 47 and on the M. C. 340; and the daily earnings on the I. C. were $7.11, on the Erie $5.08, and on the Michigan Central $32.56.

Vol. II, pp. 536, 537, 623.

The freight portion on those twenty-five cars was $4,138.57 and the mill portion $4,171.56.

Ibid., p. 623.

On the shipment of twenty cars of lumber from Fernwood to Chicago, March 17, 1903 (under the 24-cent rate; 14 to Cairo) the freight was $3,743.65. The 16-cent rate would have added $15.23 per car, making the total freight on the twenty cars, $5,478.30. The average loading was 102 per cent. of the stenciled capacity of the cars.

Enochs, Vol. II, p. 537.

Cypress singles show a loading of 67.75 per cent.; sash weights 63.38 per cent.; cement 63.32 per cent.; lime 44.32 per cent.; fertilizer 66.79 per cent.; coal (four cars) 82.11 per cent, the minimum allowance, per car, of 100,000 pounds capacity being 72,000 pounds.

On live stock to St. Louis, rate is $75 per car and the loading 37.9 per cent.

Earnings per car, double loads, of lumber were $94.18 against $75 per car for live stock. The loading of the seven cars of lumber in this comparison, was three cars, 74 per cent.; two cars, 76.41 per cent., and two cars 75.25 per cent.

The average loading of cotton shipped from Jackson, Miss., to points in Central Traffic Territory, October,

1901, 1902 and 1903, was 40.23 per cent. of the car capacity, or 12.60 tons per car. In the comparison with lumber the average rate on cotton (1903) was 51.9 cents per 100 pounds and on lumber 29.65, so that a car of lumber loaded to 22.05 tons or 44,100 pounds earns as much as the maximum freight on cotton loaded as above, with danger of destruction favorable to lumber.

Enochs, *Ibid.*, pp. 439-540, and exhibits.

In respect to defendant's claim that they were getting back to the old rates instead of making advances, Mr. Enochs produced tariffs showing that the recent advance made rates to various points 3 cents higher than in 1889.

Enochs, *Ibid.*, p. 542.

Mr. Enochs also explained the local distance tariff of the Illinois Central Railroad and showed that its extension, with the principle of increases north of the Ohio River, would carry lumber from the Mississippi and Louisiana territory, on its line to Chicago, on a rate of 22½ cents per hundred pounds as against the combination rate, south and north, of 16 and 10 cents., making 26 cents.

Ibid., p. 543.

The Louisville & Nashville R. R.

As shown above, Mr. Compton, traffic manager of the Louisville & Nashville, admitted continuous improvement in gross and net earnings since 1903, the year of the advance.

The following amount of improvements were charged to operating expenses by that road during the six years next preceding and including 1903:

In 1888-9, $517,784.59; in 1899, $1,231,276.86; in 1900, $1,021,843.06; in 1901, $1,474,502.72; in 1902, $1,487,279, and in 1903, $2,000,203.63, aggregating, in the six years, $7,732,877.

Vol. II, p. 544.

Its percentage of expense to earnings in 1901-02 was 68.06, and in 1902-03 (the year of the advance) same was reduced to 67.62. Its net earnings per mile had increased from $2,948.77 in 1901-02 to $3,337.83 per mile in 1902-03.

Ibid., pp. 543-544.

In 1902-03, after paying its dividends, it had a surplus of $3,211,047.74.

Ibid., pp. 543-544.

The report of the L. & N. for 1904-05 shows still greater earnings.

PER TON PER MILE OF THE L. & N.

Mr. Enochs' attention was called to the exhibit filed by Mr. Compton, showing the proportions of the freight accruing to the L. & N. south of the Ohio River to Central Traffic territory. He (Mr. Enochs) stated that D'Olive (the point selected by Mr. Compton for an average on the Montgomery and Mobile division) does not appear

in the report, time table or the guide of the L. & N., but is right down near Mobile, at the extreme end of the division which it represents for mileage.

Elleanor, selected for the A. & F. division, is the farthest station on the end of the division.

Neither of these points is properly taken to figure the per ton per mile on. The mean distance between Montgomery and Mobile, ninety miles, should have been taken as representative.

Manistee, another point, is not in any guide, but was found by Mr. Enochs to be on the Ripton & Montgomery road.

Lookout, the point selected by Mr. Compton for the Mobile & N. O. division, is about thirty miles out of New Orleans, in a marsh, and does not originate lumber shipments.

Speaking further of Mr. Compton's tables, Mr. Enochs says the points selected are in no sense representative, and that as to the Mobile & New Orleans division no part of it is representative as to western shipments.

Another feature:

> "He takes Cairo, Evansville, Louisville and Cincinnati. He reaches Cairo over his own rails, and it looks as though it were put there to average up long distance. His exhibit was not fair, because he put in the M. & N. O. division on which there is no lumber (movement to C. F. A. territory), and leaves out his division north of Montgomery where there is a considerable movement. It is but fair that the nearest mileage basing territory should be consid-

ered when you consider the proposition in relation to the west side. The Arkansas distances are not against this side."

Vol. II, pp. 545-546.

Again, Mr. Compton did not include in his estimates the lumber going to such places as Louisville and Cincinnati, a large movement.

Mr. Compton in reaching his average rate of 5.23 mills per ton mile takes the average distance to be 710 miles, whereas Mr. Enochs states that should be 110 miles less, which would bring the earnings above 6 mills. He gives his reasons.

Ibid., p. 547.

Referring to Mr. Compton's tables showing average rate per ton per mile from points in Alabama, Mississippi and Louisiana to points in the North, Northwest and Northeast, Mr. Enochs explains its unfairness by showing that Carriere, a point selected on the N. O. & N. E., is on the extreme of the lumber-producing district; Yellow Pine on the M. & O., in Alabama, is not representative for the same reason; Kentwood, taken on the I. C., is below the mean of the pine belt; Hanson City, another point, is not in the yellow pine belt at all.

Ibid., p. 548.

L. Green's Comparative Rate.

Referring to Exhibit No. 9, produced by Mr. Green of the Southern Railway, purporting to give a comparison of rates on yellow pine lumber from South Mississippi

points with rates on hemlock, spruce and white pine from northern points, Mr. Enochs showed that it was not fairly representative; that half the number of points selected were in North Carolina; the points of destination were "one line" points. That he selected places (for destination) like Parkersburg, W. Va., in the hardwood producing section to which there would be no movement between the points selected. Again, the points of origin selected are in a very meagre section of production. Some of the points are in no mercantile directory, and it has been ascertained, as to points of origin and destination, there is no movement.

That the same proposition applies to points of destination from the west. He (Green) selected places of minimum value as to inhabitants and business, and as to points in Montana, some of the points, there is no movement from the Pacific coast; they use native pine. Hence, Mr. Enochs assumes that Mr. Green's tables were not representative of the lumber movement.

Enochs, Vol. II, p. 549, *et seq.*

(Note—A rate without a movement is what is known as a "paper rate.")

RATE PER TON PER MILE UNDER THE 14-CENT RATE ACCRUING TO THE N. O. & N. E. AND THE MOBILE & OHIO.

The average haul of the N. O. & N. E. is eighty-five miles, its proportion of the through rate to Cairo was 6 cents per 100 lbs., or about 14 mills per ton per mile. Its

average on all freight handled in 1902 was 8.02 mills per ton per mile.

In 1902 the average rate per ton per mile of the Mobile & Ohio on all freight was a fraction under 6 mills.

Taking Waynesboro as a basis, a fair average for the lumber haul by the M. & O., the distance to Cairo is 410 miles. Under the 14-cent rate it received 6.83 mills per ton per mile; to St. Louis, 6.37 mills on the former 18-cent rate.

The advance rate complained of gives the Mobile & Ohio, 7.8 mills per ton per mile, for its average haul to St. Louis, and 7.1 mills to Cairo.

(Note—The Illinois Central receives less than 6 mills per ton per mile from Cairo to Chicago.)

Vol. II, p. 557.

Mr. Robinson stated that there has been no movement of lumber to the west from the Mobile and New Orleans Division of the L. & N. R. R., except what it received from the G. & S. I. R. R.

Ibid., p. 558.

(Note—The L. & N. no longer receives lumber from that road.)

Mr. Bowes, of the I. C., figured the average rate per ton per mile on lumber received by the Illinois Central, from its own stations, from the Gulf & Ship Island Railroad and the A. & V., counting through Cairo, at 5.02 mills (*Ibid.*, p. 559), but got that average by taking the mileage on the I. C. from McComb City (which produced

6.02 mills per ton per mile), then the mileage from Jackson, on business from the G. & S. I., yielding to the I. C. 3.85 mills per ton per mile, and to the G. & S. I. (say 17 mills), as each constituted about one-half of the total, he added the two together (10.05), then divided by 2, producing, as the result, 5.02 mills.

Mr. Bowes added that a considerable part of that lumber went by way of Evansville and Louisville, which reduced the rate per ton per mile, as he thought, to about 4½ mills, although the rate to those upper crossings is higher. But, when lumber is destined for points north of the Ohio River, the rate is made by combination on Cairo.

Ibid., pp. 563-564.

THE G. & S. I. DIVISION OF THROUGH RATES.

In answer to the suggestion of defendant's counsel, that the intermediate roads were compelled to give these divisions, Mr. Gardiner said:

> "It has been brought out here in a number of ways that the G. & S. I. was receiving 4 cents per hundred before it built to Jackson; when it built to Jackson it got 7 cents by voluntary agreement on the part of the I. C. That has forced the Mobile & Ohio and Alabama Great Southern and the Cincinnati Southern to increase the division south of Meridian on lumber that comes from the G. & S. I., so it (the G. & S. I.) gets substantially the same whichever way the lumber moves, whether through Meridian or Jackson—that is, competition between the railroads for this business—and has given the originating line

an undue proortion of the rate, which reduces, to the intermediate lines, the amount of the revenue they get, and they are dissatisfied with that, and have advanced the rate on lumber.

"There is a large movement south by the G. & S. I. from Hattiesburg and from the Columbia branch, at 4 and 4½ cents."

Ibid., p. 572.

ILLINOIS CENTRAL REDUCTIONS, TAP LINE ALLOWANCE.

Complainant's Testimony, Since Suit Was Filed to Enforce Commission's Order.

After Messrs. Bowes, Gee, Compton, Hale and Steele had testified as above in February, 1906, complainant examined Messrs. T. J. Stewart and Nathaniel G. Scott, who testified to cost of portions of the Gulf & Ship Island Railroad, as noted above. (Vol. I, pp. 379, 390.) And Messrs. Butterfield and Gardiner, who testified to average cost and selling price of lumber (*Ibid.*, pp. 383-384); Mr. Gardiner also testifying, as noted, to cost of one-half of the Laurel branch of the G. & S. I., as noted above. Also, Mr. C. W. Robinson, who testified that the Illinois Central Railroad Company issued a tariff, effective March 27, 1905—B 12,013, I. C. C. 3153—on cross-ties, from the central yellow pine territory, to points beyond the Ohio River. The rate applied to sawed and planed cross-ties, and was 26 cents per tie over the main line of the I. C., between Lagon, La., and Pearl Miss., covering substantially, the yellow pine territory on the Illinois

Central Railroad. By this tariff, agents were instructed to bill the ties as weighing 165 pounds per tie, which would make the rate to Chicago about 17½ cents per 100 pounds, as against 26 cents per 100 pounds, the regular tariff rate prior to its issuance.

The average weight of cross-ties is 140 pounds.

The witness and other manufacturers had been figuring on a contract for about 400 carloads of these ties for the Southside Elevated Railway Company, Chicago, calculating the freight rate at 26 cents per 100 pounds, before this new tariff was put on.

The ties were from the line of the I. C., as Mr. Robinson understands.

That tariff was superseded almost immediately by another "C. 12013, I. C. C. 3171," naming the same rate per tie, but to be billed as weighing 130 pounds instead of 165 pounds, which raised the rate to Chicago to 20 cents a hundred. Cross-ties do not differ from any other lumber.

Ibid., pp. 387, 388, 389.

Copies of these two tariffs have been filed as part of testimony noted.

Ibid., pp. 418-419.

Tap Lines.

Mr. Enochs testified that he has the management of the Pearl River Lumber Company, which operates a logging road called the Brookhaven & Pearl River Railroad Com-

pany. That he received a letter from C. C. Cameron, general freight agent of the Illinois Central, dated January 10, 1906, proposing to allow the Brookhaven & Pearl River Railroad Company a division of 2 cents per 100 pounds on yellow pine lumber delivered to the I. C. at Brookhaven, when destined to Ohio River crossings and beyond. The lumber to be billed out of Brookhaven at the regular tariff of rates applying from that place and the division of 2 cents per 100 pounds to be paid by monthly claim. And Mr. Enochs was directed, in the event of acceptance, to keep a careful count of all *logs* received by his mill that check of the arrangement could be readily made.

The letter also stated that the same arrangement would be made after February 1st with other roads of similar character and length.

Ibid., pp. 401, 415.

Mr. Enochs also introduced a bill of lading of the Kentwood & E. R. R. Co., dated February 2, 1906, for a car of lumber manufactured at and shipped from Kentwood via the I. C. to Jackson, Miss. The logs from which the lumber was made were hauled in by the logging road to the Brewer Lumber Company's mill at Kentwood.

Ibid., p. 412.

Mr. Enochs also stated that the practice of making tap line allowances running from 2 to 6 cents a hundred pounds is still kept up by the roads in the yellow pine regions of Arkansas and Louisiana west of the Missis-

sippi River, and that the logging conditions both east and west of the river are the same—the operations becomes more expensive every year.

Ibid., p. 470.

AVERAGE RATE PER TON PER MILE OF THE ILLINOIS CENTRAL ON ALL FREIGHT.

In 1902-03 it was 5.91 mills.

In 1904, according to Mr. Bowes, it was 6.07 mills, and, in 1905, 5.87 mills.

Bowes, *Ibid.*, p. 140.

While Mr. Bowes says the expense of operation of the I. C. has increased 10 per cent., he bases the statement on figures he says were furnished by the general manager.

The annual report on file does not indicate so great an advance.

DISCRIMINATION AGAINST YELLOW PINE IN FAVOR OF OTHER LUMBER.

The substantial difference in the rates on cottonwood and cypress has been stated above, the difference being at least 20 per cent. against yellow pine.

The justification attempted, is that water competition applies to the former. There is no substantial, actual competition, as testified by Barnett, Enochs, Robinson and Gardiner.

Mr. Robinson gave up the attempt to beat the railroads by water competition.

Vol. II, p. 558.

The foregoing statement, findings and conclusions of the Interstate Commerce Commission, and abstract of testimony, taken before the Commission, and since, with the notes, are set out as a convenient introduction to the argument which follows:

ARGUMENT.

I.

At the outset it may be said that, while the claim of necessity for more revenue to meet increasing expenses of operation is set up and pressed by defendant railroads, in point of fact they were never more prosperous than at the very time the advance of two cents per hundred pounds was laid on yellow pine lumber from all producing points to Ohio and Mississippi River crossings and beyond.

It is also apparent that, while their gross and net earnings in the year 1902-03 were notably large, compared with previous years, they would have been substantially increased but for the congested conditions under which the traffic was handled—due to the enormous offerings of business and their lack of facilities to take care of it.

This is shown not alone by the whole tenor of the evidence, relating to this branch of the case, but, specifically, with regard to the Southern Railway, in its Ninth Annual Report to itss tockholders, quoted on page 258, Vol. 1, and reproduced above.

It is equally clear that the Southern Railway instigated the "movement" resulting in the advance from the entire yellow pine region, Georgia to Arkansas and West Louisiana, inclusive, and that the reason lay in the supposition that the lumber trade was enjoying either too much, or very great, prosperity. (Letter of Powell to Hudson, quoted *supra*, Vol. 2, 688.) The same notion of the rate principle appears in the answer of Mr. Compton, quoted above, when asked in relation to facts and circumstances, affecting the reasonableness of the present rate, arising after the hearing before the Commission—for he admitted continued improvement in the facilities and earnings of the L. & N., while he spoke mainly of the increased value of lumber.

Vol. 1, p. 167.

In their answer before the Commission, while the defendants admitted that the lumber traffic, as handled by them under their previous rate was profitable, they declared it was not exceedingly profitable, and they then planted themselves upon the proposition that they were entitled to share in the supposed prosperity of the lumber manufacturers—as if they did not do that, without raising rates, by reason of the increase of traffic in general, resulting, of necessity, from that condition.

But, have carriers the right to advance a rate already reasonably high, and confessedly remunerative, because of the prosperity of the shipper, and because the traffic will move, even freely, despite the advance?

It is submitted, there is no just warrant for such an assertion, and that, on the contrary, the authorities are opposed to it.

Speaking of transportation by common carriers, Mr. Justice Brewer said:

> "That business, though of a quasi-public nature, and, therefore, subject to governmental regulations, has, as a matter of fact, been carried on by private capital through corporations. The fact that it was a quasi-public business always prevented the owners of capital invetsed in it from charging, like owners of other property, any price they saw fit for its use. Reasonable compensation was all they could exact, and he who felt aggrieved by a charge could always invoke the aid of the Courts to protect himself against it."
>
> *Chicago, etc., R. Co., vs. Osborne*, 52 F. R. 912; *Smyth vs. Ames*, 169 U. S. 466.

> "Railroads have no right to graduate their charges in proportion to the prosperity which attends industries whose products they transport."
>
> *Tift vs. Southern Ry.*, 138 F. R. 753.

> "The Act to Regulate Commerce (Section 1) is merely declaratory of the common law, that charges for transportation in each particular case must be just and reasonable, and every unjust and unreasonable charge is prohibited."
>
> *Murray vs. Chicago, Etc., R. Co.*, 62 F. R. 24.
> Thompson on Corporations, Sec. 5547.
> *Atchison, T. & S. F. R. Co. vs. Denver, etc., R. Co.*, 110 U. S. 667.

II.

The advance complained of in this suit, and condemned by the Interstate Commerce Commission, was the product of a combination and agreement among the several defendants, as well as between themselves and all other railroads engaged in transporting lumber to Central Freight Association territory—that is to say, both east and west of the Mississippi River.

It is admitted that the Interstate Commerce Commission was not charged with the enforcement of the Sherman Act, against combinations in restraint of trade. At the same time, it is competnent and useful to inquire into the circumstances under which any given rate has been established, especially as it has always been considered that normal competition has a tendency to produce fair and reasonable rates.

In fact, the law presumes that when competition is untrammeled, the resulting rates will be reasonable.

U. S. vs. Freight Assn., 166 U. S. 341.
Joint Traffic Assn. case, 171 U. S. 569.

When competition is shut out by confederation, the opposing presumption ought to arise because of the temptation of the carriers, in such circumstances, to levy such tribute as the traffic will yield.

The defendants all deny that they acted otherwise than separately and independently, and deny that the object of the several traffic associations (The Southeastern Mississippi Valley, to which defendants belong; the South-

eastern Freight Association, taking in the Georgia and Florida roads, or the Southwestern—Arkansas and West Louisiana) is to affect the rates of the several members, save as that may result from wholesome discussion.

It may be here admitted that, possibly, the defendants and their traffic representatives may escape a prosecution under the Sherman Act, still, the fact remains that, not only did it appear that no one of the defendant roads *could* advance the rate on yellow pine lumber unless the others, and the members of the other associations, *would*, but *would* do so if the others *would*, and they all *did concurrently*, after three meetings—the first two being abortive.

It is manifest that the lines east of the river worked the western lines in, and it seems that the latter were not inclined to come in, because they failed to have representatives at the earlier meetings.

The whole affair, beginning with Powell's letter to Hudson, calling attention to the prosperous condition of the lumber trade, and to the fact that rates were usually made with reference to prices, was accomplished after conferences between the representatives of the eastern and western lines at St. Louis, January 30, 1903.

It was a mere accident that the Louisville and Nashvill Railroad Company postponed the operation of the advance agreed on, upon its own line, to June 22, 1903, and that was due to the circumstance that it had been temporarily enjoined in Georgia. It had promulgated

its tariff, in common with the others, effective April 15, and as soon as the Geogia injunction was removed put it in force.

Another point in this connection: The traffic representatives of these railroads, who are posed as experts on rate questions, qualified by years of experience and disinterested observation (?), having established the rate complained of, by the means shown, stand discredited by reason of their denials, so that their opinions upon its reasonableness are not entitled to and should not have the weight usually accorded the testimony of candid and competent witnesses. *"Falsus in uno,"* etc.

In response to all the assertions of defendants' counsel, and to the insistent statements of defendants' traffic men, that the advance complained of was the independent act of each carrier, and made upon its own individual judgment and respsonsibility, it is deemed sufficient to ask the Court's consideration of the minutes and correspondence produced by Mr. M. P. Washburn, chairman of the Southeastern Mississippi Valley Association, much of which has been noted above.

Vol. 2, pp. 688-810.

Note particularly the two telegrams from C. C. Cameron, general freight agent of the Illinois Central, and chairman of the St. Louis meeting, quoted heretofore in this brief.

In the face of all this evidence, we would expect that a person (always excepting counsel) who would deny

the concert and confederacy charged, would deny the existence of the most obvious facts, if harmful.

The Commission justly said:

> "The act to regulate commerce (Section 1), 'in prohibiting the unreasonableness of rates, in effect, forbids whatever conduces to such unreasonableness, and, in any event, when the unreasonableness of rates is in question, it is incumbent upon the Commission to cosider how those rates were brought about—whether they are the product of untrammeled competition or the result of a concert of action or combination between the carriers establishing and maintaining them. The advanced rates complained of cannot be claimed to be the outcome of competition, because the natural, direct and immediate effect of competition is to lower (171 U. S. 577) rather than advance rates. The advanced rates must be presumed to be higher than rates which unrestrained competition would produce.'"

The deliberate judgment of a traffic manager is entitled to consideration; but that cannot be said of the action of confederates, who, without regard to such physical or financial differences as may exist among themselves, agree on a common result.

III.

Regarding the effect to be given to the findings of the Commission:

(a) The act to regulate commerce itself provides that, in all proceedings to enforce the orders of the Com-

mission, its findings and report shall be deemed *prima facie* evidence of their correctness. (Section 16.)

(b) While the Interstate Commerce Commission is not a Court, it is an administrative body, exercising *quasi*-judicial powers, and its decisions are entitled to the highest respect by the Federal Courts.

I. C. Commission vs. C N. O. & T. P. R. Co., 64 Fed. 981.

(c) In respect to Interstate Commerce matters, governed by the law, the Commission may be regarded as the general referee of each and every Circuit Court of the United States, upon which jurisdiction is conferred, for enforcing the rights, duties and obligations recognized and enforced by said law.

K. & I. Bridge Co. vs. L. & N. R. R., 37 F. R. 567.

"The findings of fact of the Commission are *prima facie* evidence of the facts found."

I. C. Commission vs. A., T. & S. F. R. Co., 50 F. R. 295.

Tift vs. Southern Ry., 138 F. R. 753.

Interstate Com. Commission vs. L. & N. Co., 118 F. R. 613.

I. C. Commission vs. L. & N. R. Co., 102 F. R. 709.

I. C. C. vs. L. & R. R. Co., 190 U. S. 275.

L. & N. R. R. Co. vs. Behlmer, 175 U. S. 648.

"Explicit law, the settled policy of the government, the practical principles of reason and justice, require that, save for controlling reasons of law or fact, the national Courts should not discredit or dis-

parage the conclusions of the Inuterstate Commerce Commission.

"*Prima facie* evidence of a fact is such as, in judgment of law, is sufficient to establish the fact, and, if not rebutted, remains sufficientffi for the purpose.

"It is no longer open to question that the Interstate Commerce Commission is an expert tribunal, empowered by law to determine, in the first instance, the reasonable or unreasonable character of the rates charged in interstate commerce."

Tift vs. Southern Railyway, supra.

(d) It has been suggested that traffic managers are much better able, by reason of their knowledge and experience, to fix rates * * * than the Courts. This cannot be conceded so far as it relates to the Interstate Commerce Commission, which, by reason by the experience of its members in this kind of controversy, and their great opportunity for full information, is, in a sense, an expert tribunal.

E. T., V. & Ga. R. Co. vs. I. C. Commn., 99 F. R. 64.

See particularly *I. C. Comm. vs. S. P. Co.*, 123 F. R., on page 603.

Further, for the effect given to the findings of the Commission respecting matters of fact, the Court is referred to the case of the *E. T., V. & Ga. R. Co. vs. The I. C. Commn.*, 181 U. S. 1.

The burden is on the defendants to show clearly that the order of the Commission is unlawful—to raise a doubt

will not suffice. Judge Pardee (in *M. P. Ry. Co. vs. T. P. Ry. Co.*, 31 F. R. 862), said:

> "Where the matter is not clear, the object and policy of the law (Commerce Act) should prevail."

IV.

The Reasonableness of a given rate and, by consequence, the reasonableness of any advance upon such rate, is a question of fact.

> *L. & N. R. Co. vs. Behlmer,* 175 U. S. 648, and cases cited.

In that case the Supreme Court also said:

> "The law attributes *prima facie* effect to the findings of fact of the Commission, and that body, from the nature of its organization and the charges imposed upon it by the statute, is *peculiarly competent* to pass upon questions of fact of the character here (there) arising."

The burden is, therefore, upon the defendants to overcome the presumption created by the law, and which, considering the nature of the Commission's functions, ought to exist independently of the statute.

That statement is not denied by counsel, in the abstract, but it is sought to evade the force of the presumption, in the instant case, upon a notion that the Commission did not give weight, or proper consideration, to *various* phases of the defenses attempted before it.

And, it is further claimed, that new evidence produced is strong enough to overcome any presumption that might be attached to the finding.

V.

A double burden is upon these defendants—to justify the advance made upon their former long-continued rates and to overcome the finding of the Commission.

It is submitted, upon the authorities above quoted, and upon principles of the common law, of which the statute is said to be declaratory, that any rate schedule which enables a carrier to take from the public more money than is required to maintain its property, pay its fixed charges and pay a fair return upon the money invested, is unreasonable. In short, unnecessary taxation is unjust taxation, and freights levied upon transportation by carriers are in the nature of taxes, and should be confined to the purposes stated.

The first presumption to be overcome is that arising from the defendants' own acts or admissions. The *principle* is well stated in the opinion of the Interstate Commerce Commission in the case of *Holmes vs. the Southern Railway,* 8 I. C. C. Report, 568, as follows:

> "The continuance of a given rate is not conclusive evidence of the reasonableness of that rate; but, when a railway company advances a rate which has been for some time in force, the fact of its continuance is in the nature of an admission against that company, which tends to show the unreasonableness of the advance. * * * The action of a railway company, in reducing a rate upon the complaint of a shipper, is not conclusive evidence that the rate was unreasonable before the reduction; but, when the

traffic manager of that company, after a careful examination of the facts, makes the reduction, that, too, is in the nature of an admission against the reasonableness of the obnoxious rate at the time of the reduction."

Let it be noted that, in the beginning of the lumber traffic, from the territory in question, it was not only of small volume, confined to structural timbers and the like (the bulk of the potential product being lost, alike to the producer and the carrier, as stated by Mr. Enochs (Vol. 2, p. 150), but the facilities of the railroads themselves to take care of it were quite limited, when compared with their later and improved conditions, when this traffic had become of paramount importance; when practically the entire log went into manufacture and transportation —high grades and low grades.

The Commission rightly concluded that the increased expense of operation, so far, at least, as lumber was concerned, was more than offset by the improved facilities of the carriers—apparent from their constantly increased earnings in later times.

As early as 1891 the differential against flat-car shipments was abolished and the rate from producing territory to Chicago became 24 cents per 100 pounds. That rate remained in effect until the second quarter of 1894, when it was reduced to 22 cents, the rate to Cairo, the basing point, being then fixed at 13 cents. That rate was maintained throughout the years 1894-95, '96, '97, '98,

and until the fourth quarter of 1899 (September 8th), when it was raised to 23 cents, that is to say, it was raised one cent, making the Cairo rate 14 cents. The 14-cent Cairo rate was maintained throughout the remainder of the year 1899, and throughout the years 1900, 1901, 1902, and until the third quarter of 1903, when, for the benefit of the lines south of the Ohio river, a uniform advance was made by agreement, it is contended. Meantime, the traffic had grown larger and larger and the earnings of the railroads had continued to increase.

So it appears that a rate averaging not above 13 1-2 cents per 100 pounds was maintained to Cairo (and a corresponding rate to more distant crossings) for nearly ten years.

Compton Exhibit 4, Vol. I, p. 311.

The claim of the roads is that not only did depression in the lumber trade lead to the reduction in 1894, but that the previous lower ate from Arkansas territory, which compelled it, was justified by the advantage long leaf yellow pine possessed over the Arkansas product—a claim which was dissipated and admitted to be untenable through the efforts of Messrs. Gardiner, Enochs and other lumbermen in 1899, as explained by Mr. Gardiner in the intelligent statement filed by him, and which will be found on page 8 of Vol. II.

The Arkansas rate, about which no complaint has been suggested, either by the railroads or shippers on that side, had been always practically and substantially, at

least, two cents lower than the rates to Cairo from this territory, as appears to have been well known to the traffic people on this side.

See testimony of Cameron (*Ibid.*, 377), and Steele (423), quoted above.

It is true that the published rates from Arkansas to Central Traffic territory, via Cairo, since the adjustment (claimed to have been forced by competition) was made between the eastern and western lines, has been the same on both sides; yet it is shown that conditions affecting manufacture and shipment are substantially similar on both sides of the river, and that what is called a tap line division is allowed by the Arkansas and Western Louisiana carriers, running from two to four, and even six, cents per hundred pounds, to their mill patrons, for hauling in logs by their logging roads.

It is not material to determine, in this controversy, whether that practice is legal or not. The proof of the tap line division made to mill owners in the name of their logging roads, which do not participate in the transportation of the manufactured product, is highly important and valuable in that it is thus made to appear that this particular traffic is so profitable to the carrier that it can afford to make such an allowance. We are thus able to appreciate the testimony of Mr. Hale (Vol. I, p. 212), who, in referring to the alleged excessive allowances made by the Illinois Central to the Gulf and Ship Island Road, under its ten-year contract, said that a thoroughly

organized and equipped line like the former could well afford to take such traffic from the initial carrier on such terms as had been agreed on between the two.

It will be recalled here that the G. & S. I., on shipments to Ohio River crossings, in connection with the Illinois Central, got, under the former rate and still gets, seven cents per hundred pounds for an average haul of eighty miles, and the latter received the same rate (less its bridge arbitrary), for a haul of 365 miles. The rate per ton per mile being in the one case about seventeen mills, and in the other less than four. Of course, however, shippers on the line of the Illinois Central itself paid the full rate, which averaged 6.02 mills per ton per mile.

As the presumption is and must be that rates, adhered to for a considerable length of time, even if produced by competition, are reasonable to the carrier; that the tendency of competition is to produce just and reasonable rates according to the whole theory of the law—it results that not only must the thirteen cent and fourteen cent rate be deemed reasonably high, but that, in fact, the carriers could have profitably transported the same lumber at a much lower rate, even if a comparison of real rates, strictly in point, is to be regarded, that is to say, a comparison which presents the same traffic, with naturally the same movement and conditions and into the same territory.

The Arkansas and West Louisiana roads enjoy no less a monopoly of the traffic originating on their lines than

the roads on this side; and it is inconceivable, therefore, that the "tap-line" divisions could or would be made unless the lumber traffic was so desirable, under the same published tariff, as to admit of it.

The Courts should not, therefore, be misled, as the Interstate Commerce Commission was not, by specious tables of comparative rates in other sections of the country, such, for instance, as Mr. L. Green's tables of North Carolina single line schedules, where, as explained by Mr. Enochs, and not controverted, there could have been no substantial movement—or Mr. Compton's tables of extremes.

In this connection, it will be further recalled that, not only have the Arkansas lines always made the concessions, referred to, to their shippers of pine lumber, for the same logging service that the shippers on this side are compelled to perform, with the same conditions and same expense in the construction, equipment and maintenance of their logging roads (Vol. II, p. 169); but the New Orleans and Northeastern, while its traffic matters were under the administration of Mr. Barnett, and the present traffic manager, Mr. Steele, after him (*both while the thirteen-cent rate and the fourteen-cent rate were in effect*) did repeatedly put in tap line divisions in favor of its patrons (Vol. II, pp. 197-198 and 423), and only discontinued the practice at the instance of the Illinois Central, which threatened to reduce the published rate to all its shippers, unless the practice should be

stopped. The N. E. & N. O. found itself able to make an allowance of two cents per hundred pounds, which was *pro rated* by it and its connections beyond Meridian.

Not only did the N. O. & N. E., the road making the least satisfactory financial showing of all, make this division to the mills with logging roads, but the Gulf and Ship Island, while the fourteen-cent rate was in effect, repeatedly did the same thing.

The Mobile and Ohio Railroad Company also found the lumber traffic so desirable that it introduced and still maintains the practice of allowing divisions to owners of logging roads, in some instances running as high as 3 1-2 cents per hundred pounds (Vol. II, p. 393).

And, to cap the climax, as admitted by Mr. Bowes, of the Illinois Central, and proved by Mr. Enochs, beginning with February, 1906, that railroad company has concluded that it can afford to make an allowance of two cents per hundred pounds on lumber manufactured from logs hauled in over logging roads ten miles or more in length. (Letter of Mr. C. C. Cameron to Mrr. I. C. Enochs, Vol. I, p. 415.)

The reason given by the Arkansas lines for maintaining the practice of tap line divisions, on the milling in transit principle, instead of reducing their schedules, was that to make the reduction would break down rates on this side of the river.

The essence of the entire matter is that, while they were satisfied with a rate, yielding several cents less per

hundred pounds than their published tariffs, corresponding with those of the roads in this territory, they were induced to maintain a higher published rate, so that shippers on this side could make no appeals to their carriers for equal treatment.

It is maintained on behalf of the government, that the presumption arising from the long continued lower rate, as stated, coupled with the facts and circumstances adverted to, as tending to show that it was reasonably high before the last advance, has not been overcome, and that the recent conversion of the Illinois Central to the western practice greatly strengthens it so far, at least, as that road is concerned.

So that, even did the Act of Congress not make the report and finding of the Interstate Commerce Commission itself *prima facie* evidence, any Court of justice would find ample warrant, without that presumption, to condemn the arbitrary advance adjudged unreasonable by the Commission.

But counsel for defendants say the Commission found the rate produced by the last advance to be unreasonable not in itself, but because it was effected by an unlawful combination and agreement.

The only use made of the *I. C. C. vs. L. & N. R. R. Co.*, 190 U. S. 284, cited by counsel, was to say that, if the language of the Supreme Court were paraphrased, no room is left to sustain the view that the Commission could have held the advance of two cents per hundred

pounds, was in, and of itself, unreasonable, if it had not been made by respondents as members of the several traffic association.

This statement seems unjust to the Commission, since it is evident, from its report, that the manner in which the advance was brought about, was only treated as a circumstance tending to show its unreasonableness, in view of what this Court had said of the tendency of competition *to* produce just rates. The advance was expressly not condemned on that ground; whereas, in the case cited by counsel, the Court held that the finding of the Commission, that the rates on certain commodities from New Orleans to La Grange, Ga., were in themselves unreasosnable, was due to its erroneous opinion, *as matter of law*, that the railway had no right to construct its schedule by adding to the through *competitive* rate to Atlanta (the greater distance) the local distance rate from Atlanta back to La Grange. The opinion of the Commission in the *La Grange case* was that the long and short haul clause of the act to regulate commerce was violated, and that, as an incident, an unreasonable rate to the nearer point had resulted; whereas, the Supreme Court thought the dissimilarity of circumstances and conditions took the case out of the law.

If the Commission had found the rate complained of by the merchants of La Grange to be in and of itself unreasonable, independently of the particular manner in which it was constructed, it is evident, both from the

opinion of this Honorable Court, and of the Circuit Court of Appeals, in that case, that the fullest weight would have been given to the finding of the Commission upon the *fact* of reasonableness, because neither Court attempted to exercise its independent judgment, but only reversed the decree of the Circuit Court "without prejudice to the right of the Commission to proceed upon the evidence before it, or upon such further pleadings and evidence as it may allow to be made or introduced, to hear and determine the controversy according to law."

VI.

The presumption in favor of the Commission's order is not rebutted by proof that other carriers, elsewhere, may have rates as high or higher than the rates complained of, either in gross, or per ton per mile.

It is insisted by appellants that, because certain of their traffic experts have produced tables of rates, taken from the tariffs of other interstate carriers, showing a number of rates higher per ton per mile and in gross than the rates condemned here as unjust, the same should have been, and should be, accepted by the Commission and the Courts as controlling, and as establishing the "customary charges" that should be made for the service.

In short, it is assumed that a customary charge for the same service elsewhere has been established by the comparison of rates introduced on behalf of defendants, and

since, by such comparison, the advanced rate put into effect by them on April 15, 1903, does not exceed the average, or may fall below the average, the Commission was not justified in declaring the advance to be unreasonable.

And the case of *Cotting vs. Stockyards Co.*, 183 U. S. 97, was relied on below to sustain the position thus taken.

It is submitted that that case is not authority for the proposition that the reasonableness of a given rate must depend upon its ability to withstand comparison with other rates that happen to be in effect when the comparison is made. If the *Cotting case* has any bearing upon the issues involved here, it can, from the complainant's point of view, be regarded only as authority for its side, because, in speaking of the customary charge that should be regarded as reasonable, "*in the absence of testimony*" the Court was not dealing with comparative rates elsewhere, but with the particular *customary* charge made at the place in question.

The quotation made by the Court, "Long usage and acquiescence in any one uniform payment of toll is undoubtedly cogent evidence that it is reasonable," being slightly paraphrased, has the clearest application to the long-prevailing lower rate applied by these defendants prior to April 15, 1903, and fully supports the principle stated by the Interstate Commerce Commission in the *Holmes case, supra.*

It is believed that the utmost to be said of the value of comparative rate tables is that they are mere evidence to be taken into consideration.

> "In determining whether rates are just and reasonable in themselves, a comparison may be made of the particular rates with those accepted elsewhere for similar services."
>
> *Interstate Commerce Commission vs. E. T. Va. & G. R. Co.*, 85 Fed. Rep. 107.

> "But the rates to other places, or points of shipment, are unimportant, except as a circumstance or fact in the proof, and have no other than an evidentiary bearing."
>
> *Interstate Commerce Commission vs. L. & N. R. Co.*, 73 Fed. Rep. 107.

Having always in view the principle that the exaction of common carriers for the transportation service must be limited to a reasonable return upon the investment made by them, comparative tables, even when perfectly free from the criticism of unfairness in their selection, can have little or no value unless supplemented by proof of stability, the movement of the traffic under them, and the necessities of the particular carriers enforcing them, as well as other and various conditions and circumstances.

For instance, we may well expect to see a much higher rate on lumber from Oregon to selected points in California, by a railroad traversing mountain ranges, with

long stretches of vacant country, furnishing no local business, than between McComb City or Hattiesburg, Mississippi, via Cairo, to Chicago or Indianapolis, through a country practically level, teeming with population and studded with active towns and cities, humming with the thousand-and-one industries that tax the powers of the railroads to serve in and out.

But, aside from the point that comparative tables have little value in the absence of proof showing similarity of conditions in all respects, the tables produced by Mr. L. Green, the Southern's expert, are by no means fair. Enough is known of a portion to justify that statement, because, in his search for "higher rate" tables, he took points between which there could have been no perceptible movement. From the condition described by Mr. Enochs above, and which no attempt was made to rebut, it was evident that his North Carolina rates were "paper rates" only. Mr. Green had abundant opportunity between the time Mr. Enochs testified and his own last examination to acquaint himself with the lumber traffic condition in the territory from which he got his tables; but made no effort to sustain himself. He merely thought there must have been a movement, else the rates would not have been published. Had the movement been of any respectable volume, it goes without saying, considering this theory of the defendants, that we would not be wanting information about it still.

But what shall be said of the value of any of these comparisons in view of the facts of the case and the manner

in which it is known the lumber traffic has been treated by these defendants and their nearest neighbors, performing precisely the same service? And what shall be said of the per ton per mile test when it is evident that this traffic was considered so very desirable, both under the 13-cent and the 14-cent rate?

Look, for instance, at the case of the Gulf and Ship Island, which, prior to its completion to Jackson, when it could deliver its north-bound lumber either to the N. O. & N. E. at Hattiesburg, or to the L. & N. at Gulfport. It got three to four cents per hundred pounds for its share of the through rate. That was prior to 1900. The Illinois Central (an old, thoroughly organized road) then made overtures to the Gulf and Ship Island to induce it to extend its line to Jackson, about eighty miles beyond Hattiesburg, offering to allow it seven cents per hundred pounds on all lumber delivered to it for Central Freight Association territory. The offer was promptly accepted, and a ten-year contract entered into, while the Cairo through rate was 14 cents.

The result was the lumber traffic of the Illinois Central Railroad was just about doubled (Bowes, Vol. II., p. 563); its revenues greatly increased from that time, yet it comes into court whining about its low rate *per ton per mile* produced by deducting from the average it receives from its own direct patrons the division it is *compelled* (?) to pay the Gulf and Ship Island.

According to its present notion, it could not afford to carry lumber at such a low per ton per mile rate and pay

its own bridge arbitrary besides (Vol. II., p. 495); yet, beginning with February 1, 1906, it voluntarily offers a tapline division of two cents per hundred pounds to logging roads ten miles in length or over (which is practically to all of them), and in reality to the mills that own them. (Bowes, Vol. II., p. 146.)

What counsel said below about the commanding position of the Gulf and Ship Island, which enabled it to dictate its own divisions, can have no possible application to this new practice of the Illinois Central; to the concessions of the roads west of the river; to those made by the Mobile & Ohio, or those formerly made by the New Orleans and Northeastern and G. & S. I.

If the divisions allowed by the Gulf and Ship Island are excessive, as they apear to a layman to be, still, as the Commission held, the remedy is not to raise the rate, because what the shipper is concerned with is the reasonableness of the through rate *as a whole,* and not its division among the carriers.

To give an idea of the desirability of this particular traffic, it is enough to call attention to the proof made by Mr. Gardiner, and admitted, that the New Orleans and Northeastern made a regular allowance to the Gulf and Ship Island of five cents per hundred pounds on such lumber of Eastman, Gardiner & Co. as the latter road, which controlled it, would allow it (the N. O. & N. E.) to take from Laurel, and concerning the transportation of which the G. & S. I. performed no service whatever.

The N. O. & N. E. and its connections are old and thoroughly organized roads, and it must be presumed there was still a profit in handling the lumber on the through rate, else it would not have paid so much to the G. & S. I. for permission to transport it.

Mr. Hale, vice-president of the Gulf and Ship Island, who testified in February, 1906, sees nothing extravagant or unwise on the part of the Illinois Central in making the handsome allowance to his road, because, as he explains, it could well afford to do it, considering its organization, equipment and facilities to handle the traffic. (Testimony of Hale, quoted *supra.)*

Not alone have we the presumptions arising from the declaration of the statute; the customary charges of the defendants themselves; their admissions; the liberality to initial carriers and the tap-line concessions to logging roads, as well as the constantly increased and increasing gross and net earnings of these defendants, as tending to establish the claim of the government that the rate prior to the advance was reasonably high, and, *therefore,* the advance itself unreasonable, but there is another very strong circumstance against the Illinois Central Railroad, which shows that it could afford to haul lumber at a very much lower rate than even that in effect *prior* to April 15, 1903.

There is no difference, as a transportation proposition, between sawed crossties and other kinds of lumber transported from this territory; yet, in February, 1905,

the Illinois Central put in effect a tariff on crossties, effective March 27, 1905, of 26 cents per tie from all its yellow-pine territory to Chicago (Vol. I., p. 387), the tariff itself requiring its station agents to bill the ties at 165 pounds each, the true weight being about 140 pounds average. That produced a rate of about 17½ cents per hundred pounds on crosstie lumber to Chicago, as against 26 cents per hundred pounds on other pine lumber. This tariff was shortly superseded by another, changed only in respect to the weight per tie, which the agents were to bill at 130 pounds, and that produced a through rate of about 20 cents per hundred pounds.

These two tariffs,, testified to by Mr. Robinson, are set out on pages 418 to 419, Vol. I.

It is difficult to find fault with the opinion of the Iowa Supreme Court in *Cook & Wheeler vs. Chicago, R. I. & P. R. Co.*, 9 L. R. A. 764, where it was declared that:

> "the allowance by a common carrier to certain of its customers from the tariff charged others for similar services is sufficient of itself to show that the rates charged the latter were unreaosnable."

The principle of this decision, although a rebate was in question, applies not alone to the crosstie concession of the Illinois Central's tariff, but to its tap-line concession; to the tap-line divisions of the Mobile and Ohio, and to the allowances made by the N. O. & N. E. to the Gulf and Ship Island Railroad as a shipper, and not as a carrier, of the Eastman, Gardiner & Co. lumber.

To show, in the estimation of carriers, that rates per ton per mile should, or must, recede with distance, it is only necessary to look at the local distance tariff of the Illinois Central on commodities, including lumber. If its principle were carried straight through, instead of being confined to territory south of the Ohio River, the mills on its line could put their lumber into the Chicago market for about 22 cents per hundred pounds. (Testimony of Enochs, above quoted.)

VII.

It is an erroneous supposition that Trans-Mississippi Rates were unreasonably low and forced too low a rate on defendants.

Whatever may be said regarding the action of the trans-Mississippi roads in depressing lumber rates prior to 1894, they cannot be said to have exerted pressure in that direction afterwards, because, in 1899, there was a uniform advance on both sides, effective up to April 15, 1903. Hence, the argument that the western pressure being removed in 1903 (?), the roads east of the river were enabled to make a fair advance should be without effect.

Indeed, it seems hardly fair for the defendants to contend that the present rate is reasonable, because produced by competition, since it is manifest that competition was eliminated by the several agreements of the roads east and west to make the several advances they did make. It is equally manifest that, until very recently

(February, 1906), only two of the defendant lines (the I. C. and M. & O.) propose to meet, in part, the true well-known rates west of the river by making concessions to the shippers' logging roads.

It was said by counsel for defendants, below, that, on April 15, 1903, the competing lines from Arkansas to Cairo increased their rates two cents per hundred pounds, and it was this fact which enabled defendants to make said advance of two cents per hundred pounds from Mississippi territory to Cairo. And it is said, further, that the rates charged by defendants prior to said advance of two cents were accepted by them, not as being reasonably high, but as being the highest they could secure under the stress of the Arkansas competition.

A stranger to this record would infer, from these statements, that a case of cause and effect was presented; that, independent action had been taken by the Arkansas roads, which had relieved a pressure on the defendants, and thereupon the latter had asserted their rights, whereas, in truth and in fact, a great volume of profitable business had come to the roads from the rates established in 1894, continuing and increasing, notwithstanding the agreed advance in 1899 on both sides; and whereas, in point of fact, as is perfectly manifest, the Western roads were brought into this conspiracy against the patrons of all by the defendants themselves.

A fairer statement, it seems, would be about in these terms: The yellow-pine industry east of the Mississippi

River for a long period of time was exceedingly limited, being confined to supplying a local demand and selling a small quantity of structural timbers, carried north by the railroads at great expense on account of their poor and limited equipment, the car capacity being then not in excess of ten to twelve tons (Vol. II., pp. 150, 151); the yellow pine region of Arkansas was developed by a number of shrewd lumbermen from Wisconsin and elsewhere, who proposed to raid the former white pine markets with the Arkansas product. (Vol. II., p. 153.) They were encouraged by their railroads; they invaded the Western markets and achieved a victory over white pine; the rates allowed by the railroads helped them along, and helped the roads by increasing the density of their traffic. The whole product of the tree went to the market. On this side, the freight rate, with the flat-car differential, resulted in the greater portion of the log being left in the woods to decay. As expressed by Mr. Enochs, it was lost both to the millman and the transportation companies. (*Ibid.*, p. 150.)

Regard for their own interests induced the roads on this side to cultivate this traffic. The low grades could not move on the old rates, whether competitive or not, so, for their own sake principally, these roads put in rates slightly in excess of those adopted on the other side when there was no competition, and evidently found to be highly remunerative by the Western roads. As a consequence, thousands of cars of lumber went North, where

only a few hundred traveled before. Millions of dollars were invested in the industry, and all the product went to the markets. As the timber was cut away from the lines of the railroads, the millmen built and equipped expensive logging plants to keep up their supplies of raw material. Meantime, the railroads adopted a standard gauge, built bridges and dispensed with the shifting of trucks and transfers by ferry; heavy grades and curves were eliminated; cars were introduced with capacities running from 60,000 to 100,000 pounds, and eighty-ton locomotives took the place of the old thirty-five-ton. (*Ibid.*, p. 152.)

Thus, a great traffic was built up, and, while the shippers prospered—at least, those who had the foresight to buy timber while it was cheap—the railroads themselves grew, and grew in prosperity.

In the height of this prosperity, and the general prosperity of the country, demands were made for better wages by employees, and these were conceded to some extent. Naturally, the prices of material rose with the demand produced by the tremendous busines the roads had to take care of—good, paying business, as their reports indicate. In 1902 the rush of business was so great that such non-perishable articles as lumber had to be sidetracked, and congestion from defective transportation and terminal facilities resulted, all of which added to the expense of operation. Still, the gross and net earnings of the roads were greater than ever up to that time, and only surpassed since.

In this situation, and because the lumber trade had recovered to a great extent from its then recent depression, it occurred to the railroads that the rates on lumber in force from 1894 to 1899, and then raised by agreement, were too low, whatever the Arkansas lines might think about it. Then a letter from Mr. Powell, of the Southern, to Mr. Hudson, of the Illinois Central (Vol. II., p. 688), led to an informal conference at St. Augustine, Florida, followed by a more formal meeting at New Orleans, from both which meetings the Arkansas lines were absent, and, lastly, the concurrent meetings of the Southeastern Mississippi Valley Association and the Southwestern at St. Louis, and a concurrence of views which enabled the east side roads, following the Arkansas lines, the old authors of fair rates, to lay two cents additional on lumber.

If, under the circumstances of this case, instead of taking the customary rates charged by the defendants as the best evidence of reasonabelness, resort shall be had to comparisons with the rates of other carriers, regardless of operating conditions or movement or financial conditions being proved, then it is proper to remark that, where the net earnings of a railway company under an existing tariff of rates, in the face of larger expenses than usual, are such as to admit of a fair return for the services; to enable it to pay all fixed charges, and to create a large fund for betterments or other purposes, then the lowest rate in effect elsewhere, upon any given

commodity, forming a large portion of its traffic, should be a more satisfactory test of reasonableness than that showing a higher average.

And here it will be observed that some of the tables produced by Mr. Bowles, of the Illinois Central (as noted above). and many of those produced by Mr. Gardiner, showed lower rates per ton per mile than the rates presently charged by these defendants. (Vol. II., pp. 660-678.) The Illinois Central rate, Cairo to Cricago, is ten cents per hundred pounds, or 5½ mills per ton per mile.

VIII.

Position of the Illinois Central.

It is evident from the testimony of *Mr. John F. Wallace,* the eminent person who was then general manager of the Illinois Central, that his company thought the advance complained of should be maintained, *not because the railroad needed the money,* but because it entertained the belief that the tide of prosperity, then on, was at its height, and its ebbing meant disaster; the future was enveloped in gloom. It was necessary, therefore, to get in all the money possible and store it up for use during the impending dark days.

After saying his company was out of the market for cars this colloquy ensued:

Commissioner Prouty:

"You are not buying cars this year?" (1903.)

Mr. Wallace:

"No, sir."

Mr. Andrews:

"Why are you not buying this year?"

Mr. Wallace:

"For the reason that we apprehend a checking of the present business prosperity of the country."

Commissioner Prouty:

"Would that be a reason, Mr. Wallace, why you should reduce rates or why you should further advance rates?"

Mr. Wallace:

"That is a reason why we should endeavor to maintain rates as they are until we know what the conditions are going to be when that state of affairs is reached. If our business falls off, as we expect it to do, and we are not able to reduce our expenses, why it would be a reason for very strongly maintaining or advancing rates."

Commissioner Prouty:

"As I understand it, these rates have been advanced in the last four or five years because you have had more business and because the country has been prosperous; and now, you say that, if you have less business, and there is no such prosperity throughout the country, you want to still further advance your rates."

Mr. Wallace:

"There is a very logical answer to that, and that is this:

"Mr. Andrews hasn't reached that point yet, but, in the last year, or in the last year and a half, we have had to advance our rates of pay for labor, so that we are now on a basis of approximately

> $2,000,000 a year more than we were two years ago. Most of those advances in the rates paid for labor have been due to negotiations with labor organizations, and, while there may be some railroad managers who will have the nerve to fight those organizations and to resist demands for advanced rates of pay, it is a matter I don't think any of them will attempt unless they are driven to the last extremity. Now, the effect of that has been to force every item up, and we do not know—in fact, we are persuaded—that we will have a great deal of difficulty in reducing those rates when business falls off; and to that extent, at least, when business does fall off, we shall be handicapped as far as reductions are concerned.
>
> "Again, during the years of prosperity, we have been hounded by our customers and clients to increase our equipment, in order to take care of the increased business and to give them the facilities they needed, and we have spent money for new equipment, for additional tracks, for additional warehouses and facilities of all kinds, and if business falls off, and we don't have the traffic, we have still got to earn the interest on the cost of these additional facilities with a less volume of business."
>
> Wallace, Vol. II, p. 330.

From its revenues for the year ending July 30, 1903, the Illinois Central, after paying its fixed charges, taxes, renewals, maintenance, sinking fund, and setting aside $4,881,000 for betterments, paid 6 per cent. dividends to its stockholders and 4 per cent. on $10,000,000 of leased line stock.

Evidently, its general manager, speaking for the road, considered that a condition of prosperity. The *fear* expressed was that it would not continue.

For the year ending June 30, 1905, the Illinois Central has paid 7 per cent. dividends. So far from the anticipated falling off in business having occurred its volume has continued to grow.

The gross receipts of this road from operation for the year ending June 30, 1905, reached the enormous total of $49,508,649.94, and after deducting all taxes and expenses of operation the net earnings were $14,396,943.89. Its other revenues from investments amounted to $2,759,-019.54.

Vol. I, p. 436.

The balance sheet of the Illinois Central, June 30, 1905, gives the value of its railroads and equipment (the entire system) at $190,622,248.98, or, in round figures, $43,580 per mile. Its net earnings from operations, disregarding its other income for the same year, amounted to $3,291 per mile, or say, 6 per cent. on $55,000 a mile.

Ibid., p. 448.

The capitalization of the Chicago, St. Louis & New Orleans Railroad, according to the statement contained on page 18 of the brief of Mr. Andrews, filed below, is, capital stock, $10,000,000, and $47,288,000 funded debt (including $3,000,000 Cairo bridge bonds, which ought not to be considered unless the bridge arbitrary is struck off), making a total of $57,288,000, or a fraction less than $43,870 per mile.

According to the statement produced by Mr. Bowes (Exhibit G, Vol. II, p. 854) the gross receipts of these

lines, south of the Ohio River (deducting overcharges) were for the year ended June 30, 1902, $14,284,898.81, and for the year ended June 30, 1903, $15,958,872.83, while the net income from operations during the first of these years was $5,027,330.23, and for the latter, the year of the advance, the net income was $5,549,321.97, an increase of $521,991.74; and, after paying all taxes, rentals of leased lines, interest on funded debt and leased line certificates and over $700,000 for overcharges and $444,255.82 of dividends in 1903, there was left the sum of $2,688,413.28 surplus applicable to dividends or to such uses as the lessor road, the I. C., should see fit. This surplus would have paid 26½ per cent. additional dividends on the capital stock of the C., St. L. & N. O.

This table of Mr. Bowes, produced in evidence by Mr. Andrews before the Commission, gives the mileage of the Southern lines, in 1903, at 1,278.79 miles, so the net earnings from operation amounted, in round figures, to $4,300 a mile.

By the same table the total capitalization per mile of this road is put at $45,213.72. The stock being $8,046.86 per mile, so that, after paying interest on funded debt, taxes and rentals, there was left a surplus equal to $2,448 per mile.

In view of these showings it is not deemed necessary to follow the testimony of Mr. Wallace about the cost of reproduction of these lines of railway.

It seems manifest that if Mr. Wallace himself could be recalled at this time, and display the candor for which

he has become famous in the story of the Isthmian Canal, upon being reminded of his false prophecy concerning the decline in traffic, he would cheerfully surrender his notion that the advance ought to be maintained.

While the solicitor for the Illinois Central Railroad Company, in a brief filed in the Circuit Court, disclaimed all purpose to discuss the reasonableness of the particular rates in controversy—leaving that to the special counsel for all the defendants—he did quote a brief passage from the opinion of the Supreme Court in *Smyth vs. Ames*, 169 U. S. 466, and then set out tables of figures and quoted certain testimony to prove the value of that road and equipment, and essayed the inference that, to reduce the rate complained of (so that the *customary charge* would be substantially restored), would be to deprive the owners of this property of a fair return upon the value of their property. The passage quoted is as follows:

> "What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience." Omitting the clause immediately following in the opinion: "On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

And here attention is directed to the undisputed testimony of Messrs. Robinson and Johnson, quoted above, that Mr. Hudson, traffic manager of the I. C., advised Mr. Harrahan, the vice-president, in 1898, when the 13-

cent rate was in force, that his road would find it profitable to pay 6 cents to the proposed road from Meridian to the I. C.'s Aberdeen branch.

When a railroad can take care of its fixed charges, pay usual dividends, and invest $17,806,039 out of its earnings for betterments and additions, in five years, it indicates a condition not demanding new burdens on traffic.

Wallace, Vol. II, p. 343.

Respecting the financial condition of the other defendants, enough appears in the findings of the Commission and the briefs of associate counsel. The writer only wishes to attract the Court's further attention, along this line, to the evidence affecting the Gulf & Ship Island—the railroad which, upon the fancy that its existence is limited by the duration of the yellow pine industry (contradicted in its annual report on file), sells the tonnage it controls to the highest bidder.

Bowes, Vol. I, p. 145.

The Commission having said that an intermediate carrier paying excessive divisions to an initial line ought not to recoup by advancing a through rate, already reasonably high, the defendants immediately assuming that this declaration of the Commission must be construed as an attempt, not only to deal with the question of the *reasonableness vel non* of the through interstate rate, but also to force equitable divisions among the participating carriers, called Mr. Gee, the auditor of the Gulf & Ship Island, to prove what the effect would be on that road if

the old Cairo rate should be restored and the added 2 cents cut off its net revenue.

Mr. Gee then testified to a capitalization of forty thousand and odd dollars per mile, and said that if it should make a reduction of 2 cents in its division it would reduce its net revenue to so low a figure that it would only pay 6 per cent. on $30,350 a mile, whereas in 1903 net earnings amounted to 6 per cent. on $43,631 a mile.

Gee, *Ibid.*, pp. 181, 196, 197.

Now, while the Gulf & Ship Island Railroad is capitalized at $40,394.72 a mile (*Ibid.*, p. 194), neither Mr. Gee nor anybody else can show what it cost. No one has pretended to say what was realized for its stock, and its early books are in a state of hopeless confusion. (*Ibid.*, p. 204). On the other hand, according to testimony noted above, the main line could not have cost over $12,000 a mile, and the branches not over $9,000. In fact, as Mr. Gardiner proved, the Laurel branch could not have cost over $8,000 a mile, and it was as good as the rest.

Gardner, *Ibid.*, p. 385.

It would thus appear that the Illinois Central, if dissatisfied with its ten-year contract, and still finding the division to the G. & S. I. too high, might well expect that road to give up a portion of the allowance.

It is perfectly certain that the Commission has not undertaken either directly or indirectly to dictate what the division shall be.

But, not only did Mr. Gee fail to meet the purpose of his call, but Mr. Hale, the G. & S. I. vice-president, maintained, with force and a show of reason, that the Illinois Central could well afford to make the 7-cent allowance on the 14-cent rate.

Hale, defendants, *Ibid.*, pp. 212-213.

IX.

There is nothing in the complaint of the defendants that the supposed true relation between gross and net earnings has not been maintained.

It has been made to appear, by extracts from the testimony, that the lack of facilities, both terminal and in respect to rolling stock (producing slow and expensive movement) is more responsible for the decreased increases in the proportions of net earnings than any rate condition. And, in addition, that the alleged disparity is due, in great measure, to the enormous sums paid annually out of net earnings from operation for permanent improvements—*e. g.*, $17,000,000 in five years by the I. C.

The contention of counsel, that such permanent improvements are properly chargeable to operating expenses, might be admitted without jeopardizing the complainant's case in the least, because, first, the enormous receipts of the road arising from their pre-existing tariffs has enabled them to make these permanent improvements and still pay dividends annually; and second, it will not be

necessary, *presently*, to duplicate the improvements so made; and third, the improvements made, from the contributions of shippers, necessarily tend to cheapen the cost of the transportation service and thereby add to the net earnings in all the future.

But the decision of this Court (*U. P. R. Co. vs. U. S.*, 99 U. S., 420), relied on to sustain the assertion that the Commission erred in its finding and conclusion on this point, is plainly misapplied. In the case cited the Supreme Court was not dealing with a controversy of this nature—that is to say, what a carrier may exact from the public for a *particular* transportation service. The case involved rather the question of proper charges to be allowed, as between parties interested in a common venture, before dividing up the surplus.

The *Union Pacific case* is only authority for the proposition that the question of dividends, and expenditures for betterments, is one of policy usually left to the discretion of directors.

See Rose's Notes, Vol. 9, p. 736, and cases cited.

The *Union Pacific case* is no more helpful to defendants than that of *Van Patten vs. C., M. & St. P. Ry. Co.*, 81 Fed., cited in the Court below. If the latter were an authority, then there could be no inquiry into the reasonableness of any given rate. While the *judgment* rendered by Judge Shiras was no doubt equitable and sound, when he said that the promulgation of a tariff, according to the statutory requirement, itself furnished the standard

and test of reasonableness, it was equivalent to saying that, under the law, as it stood, the trafic managers of the railroads are the sole and final arbiters. If Judge Shiras was right, in that *obiter dictum* purely, the only inquiry would have been, has the tariff in question been filed with the Commission?

That decision ignores all that had been said by other Courts to the effect that Section 1 of the Act to Regulate Commerce was itself only declaratory of the common law.

X.

The Commission has not undertaken to fix future rates, by arbitrary action or otherwise.

The right of the Commission to fix future rates was denied by the Supreme Court in the case cited from 162 U. S., and no attempt has been made since that time to fix a future rate. In this case, as in the Georgia case, the Commission has simply found that the defendant roads have themselves made an arbitrary and unjust advance upon rates of their own which were found to be reasonably remunerative. It has condemned the advance as unreasonable, and has invoked the power of the judiciary pursuant to the Act of Congress to give effect to its finding.

And the proceeding before the Commission in the first instance is entirely within the sanctions of this Honorable Court in the cases of the *I. C. Com. vs. L. & N. R. Co.*, 190 U. S. 273, and *T. & P. Ry. Co. vs. Abilene Cotton Oil Co.*, 204 U. S. ——.

No question was raised upon the Court's jurisdiction below, but, on the contrary, the defendants frankly stated that the question involved was the reasonableness of the advance made by them.

The case of *Tift vs. Southern Ry.*, 138 F. R. 753, is similar in most of its aspects to the case at bar, and two of the defendants are the same.

In fact, the only material difference between the *Tift case* and this (aside from the form of the proceedings), is, that here we have not only the just and legitimate presumption arising from the long-continued lower rate, the growth of the traffic and increasing prosperity of the carriers under it, but the further evidence—tending to show the desirability of and the profit in this particular traffic—of the tap line concessions made by three of the defendants, by all the Arkansas roads, and lately adopted by the Illinois Central. The proof of the combination and agreement was substantially the same in both cases.

We have here, in addition, the testimony of a former traffic official of one of the largest of the lumber-carrying roads (Mr. Barnett of the N. O. & N. E.) that, when he was in charge, the 13-cent rate, then in effect, was deemed reasonable.

Vol. II, p. 196.

Every point pressed here was pressed before the Commission to support the contention of the railroads that they were justified in making the advance, and the fullest

consideration was given to every phase of the testimony and argument. The question of the manner in which the advance was achieved, its necessity, the financial condition of the roads. Their condition before and during the period of the lower rates, the growth and value of the traffic, increase in expense of operation, and the opinions of experts, who made the rates, were fully considered, and now it is attempted to break the force of the Commission's Report by insisting that its action was arbitrary.

This argument is already so protracted that no attempt will be made to follow, in all their details, the briefs of opposing counsel. The following extract from the opinion of the Circuit Court in the *Tift case* is very striking, in view of the pleadings and testimony:

> "The cardinal error to which the railroads have been committed in this important controversy, is the apparent belief that they have the right, by arbitrarily increasing freight rates, to divert at any time to their own treasuries a share of the profit of successful industries or occupations. It was not contended that the antecedent rates were unremunerative. As before stated, they were conceded to be profitable."

It is fortunate for shippers that their rights are not to be left to the "self-interest" of the railroads for protection, nor concluded by the opinions of interested experts —especially not by experts who stand discredited by absurd denials of manifest fact. The unfairness of some of their tables and calculations will appear from extracts

above quoted. (L. Green's rate tables; Compton's averages and extravagant estimates, for instance.) And the Court will note the attempt of that pre-eminent traffic personage, Mr. Compton, by an imagined *equal* flat and box car movement, to construct an average of the old-time differential rates substantially above the present rates to points in the central traffic territory.

Vol. II, p. 272.

XI.

The tariff extracts furnished by the Secretary of the Commission show, not only discrimination against yellow pine, but rates from this district to very numerous points in Central Freight Association territory (back of the period of the 13-cent rate) substantially below the present tariff.

Vol. I, pp. 486-491.

Even if Mr. Longstreet's generalization (*Ibid.*, p. 492), respecting the causes that led to those rates, is regarded, these tables are still valuable as showing the desirability of this traffic, and keeping in mind what this Court and the Commission have said of the tendency of competition to produce fair and reasonable rates, it must be assumed that the same were then considered reasonable.

XII.

If lumber rates appear to be low (before the advance), in comparison with rates on other NAMED articles of traffic, it is right, from every point of view, that it should be so, for the reasons:

(*a*) Taking *all grades,* the average value at the mills was equal or nearly equal to the freight charges to destination.

Steele, Vol. II, p. 417.

(Note—The tables of comparison produced by Compton, based on dealers' prices, cannot overcome the testimony of Enochs and others showing actual results.)

(*b*) The volume of the lumber traffic is greater than any other moving out of Southern territory. It furnishes a greater tonnage than any other commodity except coal.

Vol. II, p. 162.

(*c*) Practically no damage claims arise against carriers for injury to or loss of lumber in transit. The insurance feature and element of risk are practically eliminated.

Ibid., p. 173.

(*d*) The service and cost of hauling is relatively small. There is no special equipment furnished.

(Note—Any and all kinds of cars can be and are used for its transportation. The flat cars used are the cheapest of all, and, when used, are equipped with standards

and braces by the shippers at considerable expense, and the additional weight of this equipment is charged for in the freight bills. According to Mr. Haiden Miller, it was found to be to the interest of the Mobile & Ohio—the largest user of flat cars—to use that variety of car.)

It is manifest, from what Mr. Hale, of the Gulf & Ship Island, said (*supra*), that the transportation of lumber is inexpensive, because he declared that the Illinois Central, equipped as it was, could well afford to allow 7 cents to the G. & S. I. out of the 14-cent rate to Cairo, Mr. Barnett said the traffic was cheap and desirable because it could be handled almost entirely by local freight trains—that is, it need not interfere with the movement of through freight trains carrying high-class or perishable freight.

(*e*) The lumber is loaded on the cars by the shipper and unloaded by the consignee.

(*f*) No expedition is required. It is evident from the testimony, showing the slow movement of lumber by the Illinois Central (Enochs, *supra*), that all other traffic had the right of way—all of which confirms Mr. Barnett's statement that lumber can be handled by the local freight trains, which must run at all times for the public convenience, whether the local traffic is great or small.

Ibid., p. 197.

(*g*) It is a traffic furnishing revenue all the year through.

(*h*) Under the former rates lumber produced more revenue per car than much other traffic of greater commercial value—live stock for instance.

Ibid., pp. 539-540.

(*i*) Lumber is a commodity of prime utility, and should bear the lowest rates consistent with a fair return for the service. The interest of the general public demands this.

The flat car movement on the Illinois Central, in particular, is quite limited, and, as Mr. Enochs declared, there would be no complaint if no flat cars should be furnished at all. (*Ibid.*, p. 164.) The open or gondola cars largely used come south laden with coal. Flat cars are extensively used in hauling machinery.

The statistics in evidence (noted *supra*) show that the old-time relation of empty car movement north and south has undergone a radical change in later years, so that now it is about equally balanced; and it is evident that but for the lumber traffic there would be a very great excess of empty movement north.

The complaint urged before the Commission of light loading by lumber shippers in comparison with others was practically abandoned. It could not withstand the proof to the contrary. And especially was it made to appear that where box cars were not loaded to full capacity it was due to lack of cubical space.

So far as the expense of the flat car movement is concerned, if the carriers had not provided themselves with

that cheap equipment, and same was needed, it was their own fault. It is not shown what proportion actually come south empty, what the cost of hauling them was nor how the "interchange car" account stood between defendants and other lines.

It can scarcely be considered that the expense attending the empty car movement could justify the advance on such testimony as we find in the record, especially since, during the existence of the lowest rates, the particular defendant railroads, now, as then, using the largest percentage of flat cars, found it profitable to concede from 2 cents to 3½ cents per 100 pounds out of the through rate to shippers who utilize logging roads. (Vol. I, p. 158.) This statement refers to the New Orleans & Northeastern and to the Mobile & Ohio, and to a practice inaugurated in February last by the Illinois Central.

Vol. I, p. 401.

XIII.

Since, as held in *Smyth vs. Ames*, 169 U. S. 466, the exactions of a common carrier must be limited to a fair compensation for the service rendered, and in *I. C. Comn. vs. Cincinnati, etc., R. Co.*, 164 U. S. 596, that a corporation is not entitled, as matter of right, to realize any given per cent. on its capital stock, and considering the *prima facie* presumption attaching to the Report of the Commission (recognized as an expert tribunal), and that the same is based on pertinent testimony, it follows, logically,

that, in order to support the pretension that any given rate is too low, the railroads should be able to show the cost and value of the service.

This requirement is obviously not met by proving an unascertained expense in handling empty flat cars, nor by proof that in certain localities, under unknown conditions, a larger rate per ton per mile is received by other carriers; nor by proof that, notwithstanding a decline in prices, immediately following the last advance in rates, improved business conditions, succeeding the Presidential election, brought about a stronger demand and better prices for lumber; nor by proof that an assumed normal relation between gross and net earnings has been disturbed by increases in the expense of operation, due, in large part, to investments in permanent improvements.

It must be true that, unless the moneys laid out by the defendant roads in permanent improvements, to enable them to better care for their growing business, has been unwisely spent, that means of reducing dividends will not be continuous in any appreciable degree.

In short, the disturbance of the normal relation complained of is manifestly due to causes that should command welcome, and not to any supposedly low commodity rate.

The position assumed by counsel for plaintiffs in the *Tift case*, and maintained by the Circuit Court in Georgia, was that, if a profit was derived from the lumber traffic (as frankly admitted by the defendants), it fol-

lowed that the revenue resulting from it must exceed the cost of the service, and that, how great or how small that profit was, the railway companies, which alone were in a position to know, failed to bring out the evidence. Hence, it was fair to conclude that the previously existing rates were remunerative to them.

See, also, *Minneapolis & St. L. Ry. Co. vs. Minnesota*, 186 U. S. 257.

XIV.

As to the testimony of experts.

If it be assumed that, in spite of interest and prejudgment, the traffic men who have testified to the reasonableness of the rates as advanced, have been entirely candid, it may still be urged that their opinions are no better than the reasons assigned for them; and, taking all their reasons, they still fail to show the want of an adequate return under their former rates, and all admit growth in the earnings of their several roads, and none show a real necessity for the additional burden upon the public.

But, aside from all this, it has been shown that these so-called experts were not fair in the preparation of their statistical tables either in respect to comparative rates or actual average earnings per ton per mile.

The simple story of the Southern Railway, as related by Mr. L. Green (its expert), in his last deposition (Vol. I, pp. 257-258, 254), is a complete refutation of his de-

mand for higher rates. Its progress is the wonder of Southern history. Organized in 1894,

> "it came into possession of a lot of properties poorly equipped and run-down in every respect; almost beginning with its organization, the expansion of its business began, so that its difficulties in taking care of the increased business were very much greater than those of the old lines that had been under good management for many years, kept up, improved and prepared to meet the increased business."

For the year ended June 30, 1903, its gross earnings had reached $42,354,000, and net earnings $11,364,920; and for the year ended June 30, 1905, its gross earnings were $48,145,108, and its net earnings $13,062,593.

The figures in its annual report, filed, will show how much of the gross earnings from operations went to pay for the 800 or more miles of lines held by the Southern under ninety-nine-year leases—making it apparent that the public is taxed to pay two sets of stockholders for the use of the same properties, as in case of the Illinois Central and Chicago, St. Louis & New Orleans.

Mr. Green, speaking for the Southern, admits that it has improved its service, increased its equipment, motive power and terminal facilities, and has obtained some benefit from it, and that what they thought in 1903 would be adequate equipment has not begun to meet the demands upon it.

It seems certain that but for the instigation of the Southern Railway the thoroughly considered rate situa-

tion, as established in 1899, would not have been disturbed

Lastly, while a recent advance has occurred in the prices of lumber, as indicated by dealers' values, quoted by several of the witnesses, the Court will observe that comparisons are made by the experts with the lowest prices heretofore prevailing for many years—viz., 1904, to prove the amounts of the advance. Not only that, but the prices the lumbermen have to pay for timber, labor and all material have also increased, so that, as shown above, their business in this article of common necessity, is still conducted on a comparatively narrow margin. Besides this, their plants depreciate at the rate of ten per cent. per annum, and in a short time will be a complete loss.

It is respectfully submitted that "no controlling reason of law or fact" has been advanced that should lead this Honorable Court to discredit or annul the conclusions of the Interstate Commerce Commission; wherefore, the decree appealed from ought to be affirmed.

Respectfully submitted,

T. M. Mill

Of Counsel for Appellee.